



GENDER JUSTICE IN LABOUR LAWS: ADVANCING THE RIGHTS OF WOMEN WORKERS IN INDIA

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Abstract

Women in India continue to face pervasive discrimination, violence, and systemic marginalization in their homes, workplaces, and communities. Social customs such as child marriage, dowry expectations, and entrenched patriarchal norms perpetuate inequities that deny women safety, economic opportunity, and dignity. Over time, the Indian legislature has enacted a series of landmark statutes beginning with the Sati Abolition Act of 1829, the Widow Remarriage Act of 1856, the Child Marriage Restraint Act of 1929, and the Dowry Prohibition Act of 1961, to dismantle overtly oppressive practices and establish baseline protections for women. In the domain of labour and social welfare, gender-sensitive provisions were incorporated into laws like the Workmen's Compensation Act (1923), the Wages Payment Act (1936), the Factories Act (1948), and the Maternity Benefit Act (1961). These measures sought to guarantee fair compensation for workplace injuries, timely wage payment, regulated working conditions, and paid maternity leave. Subsequent social insurance schemes under the Employees' State Insurance Act (1948) and the Pensions Act (1987) expanded the safety net by offering medical benefits, maternity coverage, and post-retirement security with explicit recognition of women's needs. Despite these legislative advances, implementation gaps and lingering societal biases often impede meaningful change, especially for women in rural and informal sectors. Ultimately, while legal reforms are crucial, genuine gender justice in India requires concurrent transformation of social attitudes, affirming women's rights as equal citizens entitled to safety, economic participation, and autonomy.

Keywords: *Gender Discrimination, Women's Rights, Labour Legislation, Maternity Benefits, Social Protection*

Introduction

"Man for the field and women for the hearth, Man for word and for needle she, Man with the head and women with the heart, Man to command and women to obey, All else confusion"

- Alfred Lord Tennyson¹

Women in India have long borne the burden of entrenched social biases that subject them to discrimination, violence, and systemic marginalization across familial, workplace, and community settings. From the cruel practices of female infanticide and child marriage to the daily threats of domestic and workplace harassment, women's access to safety and dignity remains precarious. In response to these deep-rooted inequities, the Indian legislature has, over time, enacted a series of landmark statutes aimed at safeguarding women's rights. Beginning in the colonial era, measures such as the Sati Abolition Act of 1829;² the Widow Remarriage Act of 1856;³ the Child Marriage Restraint Act of 1929⁴ and the Dowry Prohibition Act of 1961⁵ were introduced to dismantle overtly oppressive customs and provide women with basic legal protection. These early reforms signified a nascent recognition that women, as

full human beings, deserved the same fundamental protections that men enjoyed, yet the persistence of patriarchal attitudes meant that legal change often outpaced social transformation.

Alongside these general-purpose statutes, Indian labour and social welfare legislation has incorporated gender-sensitive provisions intended to protect and uplift women in economic roles that have traditionally been undervalued or hazardous. The Workmen's Compensation Act of 1923 and its successor, the Employees' Compensation Act of 2017, sought to ensure that women injured on the job or their dependents receive fair redress, abandoning the male-centric valuation of occupational harm that had previously ignored women's contributions. The Wages Payment Act of 1936, the Factories Act of 1948, and the Maternity Benefit Act of 1961 introduced critical safeguards: from guaranteeing timely wage disbursement and restricting women's working hours in hazardous environments to providing paid leave around childbirth. Later, social insurance schemes such as the Employees' State Insurance Act of 1948 and pension provisions under the Pensions Act of 1987 expanded the safety net to cover medical emergencies, maternity care, and post-retirement security all with explicit recognition of women's unique biological and social roles. While these statutes laid the groundwork for a more inclusive workforce, gaps in implementation and lingering biases often hindered their full potential, leaving many women, particularly in rural and unorganized sectors, without meaningful protection.⁶

Despite legislative advances, gender inequity persists not only in India but around the world. Globally, women perform approximately two-thirds of all labour while earning only a fraction of the world's income and owning negligible shares of its assets. Such stark disparities highlight that legal provisions alone cannot achieve true justice; societal attitudes must evolve in tandem. In India, where girls are frequently socialized to accept subservient roles, legal rights become hollow if patriarchal norms remain unchallenged. Until attitudes shift, recognizing women as autonomous individuals entitled to equal opportunity, safety, and economic security, gender justice will remain an unfinished project. Only by coupling robust legal frameworks with sustained efforts to change hearts and minds can India move closer to realising the constitutional promise that women will no longer be relegated to the margins of family, economy, and society.

Challenges and Inequities Faced by Women in India

The persistent inequities faced by women in our society begin long before they reach adulthood. Practices such as female feticide, infanticide, and child marriage continue to rob girls of their basic rights and opportunities. Even once they grow up, many women are subjected to domestic violence and various forms of sexual abuse, both in private settings and in the workplace. These experiences not only undermine their sense of safety but also discourage them from participating fully in family, business, or community decision-making. As a result, women occupy only a small fraction of leadership roles and are unlikely to ever account for even a quarter of representatives in major decision-making bodies.

Workplace harassment remains a powerful force pushing women to abandon careers or seek transfers rather than confront violence or intimidation. Far too often, the burden of navigating these hostile environments falls squarely on women's shoulders, forcing them to choose between their livelihoods and their well-being. Even when employed, many women find that their contributions go unrecognized or unpaid, particularly within the household. In jobs outside the home, they frequently receive lower wages than their male counterparts despite putting in the same amount of effort.⁷

Occupational segregation further limits women's economic mobility. A striking number of women are found in roles such as secretaries, typists, nurses, beauticians, or assembly line workers, jobs often viewed as "women's work" and therefore undervalued. In many private-sector organizations, the mantra remains "equal work, unequal pay." This systemic undervaluation means that women, despite doing essential work, rarely enjoy the same financial rewards as men.

Globally, the data paint an even more troubling picture: women constitute roughly half of humanity but carry out about two-thirds of all labour, earn only around a tenth of the world's income, and own barely one percent of its assets. While these figures reveal a worldwide imbalance, the situation in India is particularly stark. Because of entrenched social norms, girls grow up learning that they are lesser than boys—an attitude that only reinforces gender inequities over generations.

In India's workforce, women are numerically significant but often sidelined in terms of quality and security. Of the 407 million people employed nationwide, around 90 million are women, and nearly 87 percent of those women work as labourers or farmers in the agricultural sector. Even in urban areas, their presence in organised industries remains alarmingly low; as of March 2000, only 17.6 percent of employees in the structured, formal sector were women. Such figures underscore how few women are able to access well-paid, stable jobs.⁸

Finally, the legal framework meant to protect women frequently falls short, especially for those in rural communities. Many laws either contain overt discriminatory provisions or fail to consider the unique challenges faced by rural women, leaving gaps that reinforce patriarchal control over their lives. In practice, this paternalistic approach means that anti-discrimination statutes often do little more than pay lip service to equality, while the women who need protection the most are left without real recourse.⁹

Why Gender Justice Matters

The idea of "justice" has long been debated by thinkers and philosophers, evolving significantly over time. In the modern era, with the rise of democratic ideals and social consciousness, justice has come to mean more than simply applying rules; it demands creating a fair society that recognises and remedies deep-seated inequalities. Gender justice builds on this principle by specifically focusing on the injustices experienced by women. Rather than using phrases like "gender equality" or "women's empowerment" merely as slogans, gender justice seeks to address the root causes of discrimination and transform social structures so that both women and men can be treated as full human beings.

In practice, striving for gender justice is about more than ensuring equal rights on paper. It means confronting the barriers that women face every day—whether it's violence at home or in the workplace, wage gaps, or social norms that relegate them to unpaid household labour. True gender justice requires corrective measures: revising discriminatory laws, enforcing workplace protections, and challenging societal attitudes that devalue women's work and voices. Only by tackling these challenges head-on can society become genuinely equitable, where women no longer have to fight for basic dignity, safety, and economic security.

Research Methodology

This study employs a doctrinal research methodology, focusing on the systematic analysis of primary and secondary legal sources to examine the evolution and efficacy of gender-sensitive labour laws in India. It begins with a comprehensive review of statutory texts, including foundational enactments such as the Sati Abolition Act, the Maternity Benefit Act, and subsequent amendments to trace legal provisions aimed at safeguarding women's rights. Judicial pronouncements from the Supreme Court and various High Courts are examined to interpret legislative intent and assess the practical application of these statutes. In addition, scholarly articles, government reports, and relevant policy papers are analysed to contextualise legal developments within socio-economic and cultural frameworks. All collected data are synthesised through content analysis to identify thematic patterns, lacunae, and implementation challenges. Throughout this process, citations and references adhere strictly to the APA 7th edition format, ensuring consistency and transparency in documenting all legal provisions, case law, and academic sources consulted.

Gender Justice in the Indian Constitution

India's Constitution lays a strong foundation for recognizing and protecting the rights of women. As the supreme law of the land, it not only prohibits discrimination but also includes specific clauses designed to benefit women. For example, Article 15 prohibits any discrimination on the grounds of sex and goes further in clause (3) to allow special measures for women's advancement.¹⁰

When it comes to working for the government, Article 16 guarantees equal opportunity in public employment regardless of a person's gender. This provision has opened doors for more women to participate in electoral politics and hold decision-making positions.¹¹ The importance of this was reinforced by the 74th Amendment, which reserves seats for women in local Panchayat bodies, ensuring they have a direct voice in grassroots governance.¹²

Article 19 protects several fundamental freedoms: speech and expression, peaceful assembly, association, movement, residence, and the right to practice any profession or trade. These freedoms are essential for promoting equality, as they allow women to organize, speak out, and move freely without fear.¹³

True gender justice depends on realizing the broader right to equality. Article 39, as part of the Directive Principles of State Policy, calls on the state to secure adequate livelihoods for both men and women, guarantee equal pay for equal work, and safeguard the health and strength of workers.¹⁴ Similarly, Article 42 directs the state to ensure decent working conditions and provide maternity benefits. Together, these provisions underscore the Constitution's commitment to removing barriers that have historically held women back and creating a fairer, more equitable society.¹⁵

Fundamental Rights	Article 14	Equality before law
	Article 15	Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth. (It is to be noted that nothing in this Article shall prevent the State from making any special provision for women and children. Art. 15(3))
	Article 16	Equality of opportunity in matters of public employment.
Directive Principles of State Policy	Article 39	The State shall, in particular, direct its policy towards securing that; the citizens, men and women equally, have the right to an adequate means of livelihood; there is equal pay for equal work for both men and women; the health and strength of workers, men, women, and children are not abused; and citizens are not shoved, because of economic necessity, into vocations unsuitable to their age, capability, or strength.
	Article 39A	Equal justice and free legal aid. The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity.
	Article 42	The State shall make provision for securing just and humane conditions of work and for maternity relief
Fundamental Duties	Article 51A	It shall be the duty of every citizen of India to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women (Article 51A€)

Table No. 1: Gender Justice Under the Indian Constitution

Source: Secondary Data

In 1979, the Supreme Court examined the Indian Foreign Service (Conduct and Discipline) Rules of 1961 in the case of **C.B. Muthamma v. Union of India**.¹⁶ One provision required that a female officer obtain written permission before marrying and then submit her resignation once she was married. The Court held that this rule unfairly singled out women and violated their constitutional right to equality, declaring it discriminatory and therefore invalid.

Nearly two decades later, in **Vishakha and Others v. State of Rajasthan**,¹⁷ the Supreme Court addressed the issue of workplace sexual harassment. The judges ruled that such harassment undermines a woman's right to equality, life, and personal liberty as guaranteed by Articles 14, 15, and 21 of the Constitution. The Court emphasised that protecting gender equality in employment necessarily includes preventing sexual harassment, viewing this protection as an integral part of the fundamental rights enshrined in the Constitution.

Promoting Gender Justice Through Labour Laws in India

Labour laws in India have long recognized the unique concerns and challenges faced by women in the workforce. From the colonial era through to post-independence, various legal measures have been

introduced to protect women at work, not just in terms of working hours, but also with regard to their health, safety, and overall well-being on the job. These laws aim to ensure that women are treated fairly and are not put at a disadvantage simply because of their gender.

Many of these protections have been shaped by global standards, especially the conventions and recommendations of the International Labour Organization (ILO), which emphasize dignity, equality, and protection for all workers. In line with these principles, Indian labour legislation has sought to create a work environment where women can participate fully and safely.

The purpose of these laws is not only to safeguard the rights of women workers but also to help them make full use of employment opportunities, support child care responsibilities, and ensure they receive the same pay and benefits as their male counterparts for the same work. Over time, these legal provisions have helped promote a more inclusive workforce, although much progress remains to be made.

Some of the key labour laws that directly impact women workers include provisions related to maternity benefits, protection against workplace harassment, equal pay for equal work, and safeguards in factories and establishments where women are employed. These laws reflect the broader goal of achieving gender justice within the world of work.

Labour Welfare and Gender-Sensitive Provisions under the Occupational Safety, Health and Working Conditions Code, 2020

The **Occupational Safety, Health and Working Conditions Code, 2020** (OSHC Code) represents a comprehensive legal framework that brings together various labour laws to protect the rights, safety, and dignity of workers in India. For women workers in particular, this Code carries forward many of the protections that earlier legislations, like the Factories Act, 1948, had introduced, while also updating and strengthening them to reflect modern challenges, especially those involving hazardous work environments.¹⁸

Women have historically been given special consideration in labour law due to their distinct biological and social roles. The older Factories Act, for instance, had specific welfare measures for women, such as restrictions on night work, maternity protections, restrooms,¹⁹ and crèche facilities.²⁰ The new Code retains many of these protections but places them within a more uniform and enforceable legal structure that applies across sectors and States. Meanwhile, Chapter X contains Sections 43 and 44, which specifically address women's employment: Section 43 entitles women to be employed in all establishments with their consent for work before 6 a.m. or after 7 p.m.,²¹ and Section 44 requires that "adequate safety and safeguards" be provided when women are employed in dangerous operations.²²

One of the key features of the Code is its emphasis on **prior planning and approval** for factory setups. It ensures that before a factory begins operation, clear permissions must be obtained, including site plans, safety standards, and licensing procedures.²³ These approvals must now be processed within a fixed timeline, providing clarity and preventing bureaucratic delays. In cases where approval is not communicated within 30 days, it is presumed to be granted, removing unnecessary hurdles for industrial projects, while still safeguarding worker interests.

The Code also takes into account **joint responsibility** in cases where different parts of a building or premises are leased to separate factory units. Whether it is the provision of safety measures, sanitation, fire exits, or crèches, both the owner and factory occupiers are jointly liable to ensure compliance. This is particularly important in industrial zones or urban areas where multiple factories may share the same building.²⁴

Another important provision is the power granted to governments to **declare certain premises as factories**, even if they employ fewer workers or do not use electricity, provided manufacturing takes place there. This step ensures even small units are brought under the purview of worker safety and welfare laws.²⁵

When it comes to **dangerous operations**, the Code mandates that any process involving serious health or safety risks must be clearly identified by the appropriate government. It bars pregnant women from

working in such processes and requires regular medical examinations for those involved. Employers must also provide protective gear, sanitary facilities, and other necessary welfare measures.²⁶

A notable addition is the **Site Appraisal Committee**, which is responsible for evaluating the risks of establishing or expanding hazardous factories. These committees must deliver their recommendations within 30 days, ensuring that health and safety considerations are integrated from the beginning of industrial planning.²⁷

For factories involved in **hazardous processes**, the Code mandates full disclosure about any risks or dangers associated with manufacturing. Employers are required to inform workers, local authorities, and the surrounding community. Additionally, companies must draw up emergency plans and safety policies to handle accidents or disasters, and share this information with employees and the public.²⁸

Worker health is also a priority. Employers must **maintain updated health records** of workers exposed to harmful substances and conduct medical examinations at regular intervals, even after a worker leaves such a job. Only those with the required qualifications and experience can supervise these activities, ensuring proper expertise is applied to protect employees.²⁹

In case of **extraordinary health or safety lapses**, the Central Government has the authority to initiate an inquiry through the National Board. The findings may help strengthen safety norms and prevent such situations from recurring.³⁰

Furthermore, in urgent scenarios where no adequate safety standards exist, the government may establish **emergency safety standards** to protect workers until formal rules are adopted. These temporary rules have the full force of law.³¹

The Code also allows workers to report any **immediate danger** to their health or life. Employers must act on such warnings promptly, and in cases of disagreement, the decision of the designated inspector will be considered final.³²

Additionally, the Code empowers the government to issue rules exempting certain supervisory or managerial staff from specific provisions. However, such exemptions are tightly regulated to prevent misuse and to ensure that basic labour protections are not diluted.³³

In essence, the **Occupational Safety, Health and Working Conditions Code, 2020** reaffirms India's commitment to worker welfare, especially for women and vulnerable employees in hazardous industries. By combining legal clarity with strong safety norms, it takes a significant step toward creating safer, more equitable workplaces across the country.

Feature	Factories Act, 1948	OSHC Code, 2020
Definition of Factory and Coverage	Defined under Section 2(m); applies to premises using power with 10+ workers or without power with 20+ workers. Women in smaller units often remained unprotected.	Broader definition under Section 2(zn); any premises with manufacturing activity. Section 81 allows Government to declare smaller premises as factories, extending coverage and protections to more women workers.
Night Work for Women	Prohibited entirely for women between 10 pm and 5 am (Section 66), limiting employment opportunities and autonomy.	Allowed with women's written consent (Section 43), provided adequate safeguards are in place; additionally, Section 44 bars pregnant women from dangerous night shifts, balancing safety with choice.
Maternity Protections	Provision for maternity leave of 12 weeks under Section 79 (as amended), limited to status of employment in	Consolidates maternity protection under broader Code; aligns with equal treatment, ensuring paid leave and

	factories.	enabling easier compliance for unorganized sectors (aligned with Code on Social Security, 2020).
Crèche Facilities	Required when 30+ women are employed on any day (Section 48), but implementation varied.	Required when 50+ women are employed (Section 24(3)); combined with stricter enforcement timelines and penalties, promoting childcare support for working mothers.
Sanitary and Welfare Facilities	Separate restrooms and washing facilities for women under Section 42; provisions varied by state-level enforcement.	Under Section 24(1), mandates adequate and suitable facilities for washing and toilets separately for men and women, with strengthened inspection norms.
Hazardous Processes and Pregnancy	Defined hazardous processes under Section 2(cb); Section 44 mandated medical exams for women in hazardous jobs, but lacked clarity on pregnancy-specific guidelines.	Section 82 identifies hazardous processes; Section 44 bars pregnant women from such processes and requires regular medical check-ups for all women workers, even post-employment, to ensure continued health monitoring.
Women's Consent and Safety in Risky Roles	Limited scope for women to consent or refuse unsafe work; no formal mechanism to report immediate danger.	Section 43 requires written consent for work before 6 am or after 7 pm; Section 89 grants right to refuse unsafe work with inspector's decision final, empowering women to assert safety concerns.
Joint Liability and Enforcement	Separate responsibilities for owner and occupier; less clarity on accountability in shared premises, sometimes disadvantaging women in decentralized units.	Section 80 establishes joint and several liability of owner and occupier for shared premises, ensuring women workers in leased units receive uniform protections and recourse.
Emergency Safety and Interim Protections	No explicit provision for emergency standards; women often faced delayed safety rule implementation.	Section 87 enables Government to prescribe emergency safety standards in absence of formal rules, ensuring immediate protective measures for women in hazardous environments.

Table No. 2: Gender Justice in Labour Laws: Advancing the Rights of Women Workers in India

Source: Secondary Data

Employees' State Insurance Act, 1948 and Its Transition Under the Code on Social Security, 2020

The Employees' State Insurance Act, 1948 was one of India's earliest and most significant social welfare legislations. It was designed to offer financial and medical support to workers in times of need, covering a wide range of situations such as sickness, maternity, disability, and even death. Both male and female employees who were insured under the scheme were eligible for these benefits. However, the Act gave special attention to women, especially during maternity and other related health conditions.³⁴

For women workers, the Act provided **maternity benefits** in addition to standard medical and sickness coverage. These benefits apply in cases such as pregnancy complications, premature delivery, miscarriage, and other related health concerns. The maternity benefit allowed for 12 weeks of paid leave, which was

reduced to 6 weeks if the delivery happened earlier than expected. During this period, the woman was not allowed to undertake any paid work. If the insured woman passed away during childbirth or shortly thereafter, the benefit could be claimed by her nominee or legal representative, ensuring some financial support for the surviving child, or until the child's death if the infant did not survive long.³⁵

While the intent of the law was to create a safety net for workers, its implementation was often criticized. In many areas, the facilities were poorly managed, with corruption and inefficiency hampering the effectiveness of the scheme. In some instances, workers avoided using ESI medical services due to a lack of trust in the system and instead used the benefits primarily to take medical leave. Some groups of employees even pushed for opting out of the ESI scheme in favour of better services through private negotiations or collective bargaining.³⁶

Recognizing the limitations and outdated structure of older welfare laws, the **Code on Social Security, 2020**, was introduced to unify and modernize India's various social security laws, including the ESI Act.³⁷ Under the new Code, the core principles of the ESI Act remain intact, such as healthcare and maternity benefits for workers, but the structure is more flexible and better suited to today's work environment.³⁸

The Code broadens the definition of "employee" to include a wider range of workers, including those in unorganized, gig, and platform sectors. It also provides for digitized systems, easier registration, and streamlined benefit delivery. The updated law aims to address the shortcomings of the previous regime and strengthen accountability among institutions involved in delivering social security.³⁹

In essence, while the **Employees' State Insurance Act, 1948** laid the foundation for worker welfare in India, the **Code on Social Security, 2020** is a much-needed reform to expand coverage, improve delivery, and restore trust in the system particularly for women, who still face a range of social and occupational vulnerabilities.

Code on Social Security, 2020 (Replacing the ESI Act)

When Parliament enacted the **Code on Social Security, 2020**, it subsumed the ESI Act among several others, streamlining and modernising India's social security framework. Below is a comparison of key maternity-related provisions:

Feature	ESI Act, 1948 (Section 39)	CSS Code, 2020 (Section 136)
Coverage	Insured women in factories and establishments covered by ESI.	Expanded to include broader classes of establishments, including newer gig and platform workers (once notified).
Maternity Allowance Duration	Up to 12 weeks—six weeks pre-natal and six weeks post-natal.	Up to 26 weeks effectively aligning with the Maternity Benefit (Amendment) Act, 2017.
Minimum Contribution Period	70 days of employment within the previous 12 months.	Up to 26 weeks effectively aligning with the Maternity Benefit (Amendment) Act, 2017.
Condition on Work	Woman must not work during benefit period.	Similar restriction; no work allowed while receiving the allowance, but now extends to adoption and surrogacy cases (as per CSS Code read with the Maternity Benefit Act, 2017).
Nominee Payment on Death	Nominee receives remaining allowance if mother dies and child survives.	Similar restriction; no work allowed while receiving the allowance, but now extends to adoption and surrogacy cases (as per CSS Code read with the Maternity Benefit Act, 2017).

Medical Care Provision	Standalone ESI dispensaries and hospitals.	Merged under unified social security health benefits; empanelled hospitals and insurance networks.
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Table No. 3: *Code on Social Security, 2020 (Replacing the ESI Act)*

Sources: Secondary Data

Maternity Benefits and the Essence of Gender Justice in Labour Laws

Women's economic dependence has long contributed to their social marginalization. To address this, the law must ensure that women can remain financially secure before, during, and after childbirth. While the Maternity Benefit Act of 1961 first guaranteed paid leave around the time of delivery, the newer Code on Social Security, 2020 has strengthened and broadened those protections.

Under the original 1961 Act, a "maternity benefit" meant a sum equal to the woman's average daily wage, payable for her actual absence from work. Any woman employed directly or through a contractor for at least eighty days in the twelve months preceding her expected delivery could claim this benefit. Employers were expressly forbidden from terminating or altering her terms of employment during maternity leave. If they did, they faced fines ranging from ₹200 up to ₹5,000, and even possible imprisonment of up to two months.

The Code on Social Security integrates and expands these rules. Now, every establishment with ten or more employees must provide paid maternity leave of twenty-six weeks (up from twelve), regardless of whether they are factories or covered by the Employees' State Insurance scheme. Women working in smaller establishments still qualify for twelve weeks of paid leave. In addition:

- **Higher wage protection:** During her leave, a woman receives her full wages (rather than two-thirds of her previous salary), ensuring she isn't pushed into financial hardship.
- **Creche facilities:** Companies with fifty or more employees must provide on-site crèche rooms and allow women four visits per day to feed or nurse their child.
- **Work-from-home option:** After her initial leave ends, a woman may request to work from home (where the nature of work allows), respecting her need to care for the new born.
- **Prohibition on dismissal:** Like the old Act, the Code strictly prohibits dismissing or reducing a woman's wages while she's on maternity leave or receiving any medical bonus. Any such action attracts penalties that mirror—and in many cases exceed—those under the 1961 Act.

By folding maternity benefits into a comprehensive social-security framework, the Code on Social Security ensures no woman is forced to choose between her job and her child's well-being. It also aligns India with international best practices by recognizing that extending leave, guaranteeing full pay, and providing child-care facilities are essential steps toward genuine gender justice in the workplace.

Feature	Maternity Benefit Act, 1961	Code on Social Security, 2020
Coverage	All women employed in factories, mines, and shops/establishments with ten or more employees (state rules may specify threshold).	Any woman working in an establishment with ten or more employees; once notified, also covers gig/platform workers and those in establishments with fewer employees under state rules.
Leave Duration	Up to 12 weeks: six weeks before expected delivery and six weeks after.	Up to 26 weeks for the first two children (aligns with the Maternity Benefit (Amendment) Act, 2017). For a third child onwards, 12 weeks; includes leave for adoption and commissioning mothers (surrogacy).

Minimum Requirement	Service	At least 80 days of work in the 12 months immediately preceding the date of delivery.	At least 80 days of contributions in the 12 months before the expected delivery, adoption, or commissioning date.
Payment Rate		Full average daily wage (no less than the sum payable under ESI for those covered by ESI).	Full wages (100% of average daily earnings) for the entire leave period.
Extension for Illness/Complication	for	If a medical certificate confirms illness or pre-/post-natal complications, up to four additional weeks after the standard six-week post-natal leave.	Up to one additional month of leave (four weeks) on medical grounds, and if the woman suffers any illness arising out of pregnancy, delivery, prematurity of child, or miscarriage, an extra leave may be granted as per medical certificate.
Restriction on Work		A woman cannot work in any establishment during the period she is on leave under this Act.	Same restriction: no work is permitted while receiving maternity allowance. Applies equally for adoption or commissioning mothers.
Crèche Requirement	Facility	No explicit provision	Establishments with 50 or more employees must provide a crèche facility within a prescribed distance; allow four visits per day.
Medical Bonus		A one-time medical bonus of ₹3500 (amended to higher states' rates) payable where no prenatal/postnatal care is provided by the employer.	Replaced by unified health benefits under the social-security framework; access to medical care is through empanelled hospitals or insurance networks rather than a separate bonus.
Nominee Payment on Death		If the mother dies during leave period and child survives, the remaining leave amount is paid to the nominee until the child's death.	Higher fines (as determined by state rules) and potential prosecution; in addition, non-compliant establishments risk losing eligibility under social-security schemes. Employer may face compoundable
Penalties for Non-Compliance		Fine ranging from ₹500 to ₹2,000 for employers who violate provisions; continued violation may lead to imprisonment of up to three months.	Higher fines (as determined by state rules) and potential prosecution; in addition, non-compliant establishments risk losing eligibility under social-security schemes. Employer may face compoundable penalties, and repeated defaults can lead to stricter enforcement actions under the Code.
Work-from-Home Option		Not specified.	Allows a woman to work from home after availing half of her leave, provided the nature of work permits and employer agrees. This option remains in effect until six months from the date of delivery or placement of a child.
Notification & Record-Keeping		Employers must maintain a register of maternity leave and benefits paid; report births and benefits to the	Establishments must electronically maintain records of maternity leave, benefits disbursed, crèche usage, and any work-from-home arrangements.

	prescribed authority annually.	Reports are submitted to the appropriate authority under unified social-security reporting formats.
Application Process	Woman submits a written claim to the employer along with proof of anticipated delivery date (medical certificate).	Similar process; claim must be filed electronically or in writing with prescribed forms under the Code. Employer has to issue sanction order within 15 days of receipt of complete documentation.
Job Security During Leave	Employer cannot terminate, dismiss, or alter terms of service during maternity leave; any notice served during leave is suspended until the leave ends.	Same protection applies: no dismissal, termination, or change in service terms during maternity leave. Additionally, any notice of termination issued during leave is deemed ineffective until after the leave period concludes.

Table No. 4: Code on Social Security, 2020 (Replacing the Maternity Benefit Act)

Sources: Secondary Data**Equal Remuneration and Gender Justice in India's Labour Laws**

Equal remuneration for work of equal value remains central to gender justice in India's labour laws. Historically, stereotypes about women's "weaker" physical capabilities led to their systematic underpayment, even when performing the same tasks as men. Early industrialists exploited this bias, hiring women at lower wages and subjecting them to unsafe conditions. To counteract such practices, the International Labour Organization promoted "equal pay for equal work," an idea enshrined in Article 39(d) of the Indian Constitution. In response, Parliament passed the Equal Remuneration Act in 1976, prohibiting gender-based discrimination in recruitment, wages, and service terms. The Ministry of Labour & Employment periodically issues guidelines and monitors compliance to ensure employers don't differentiate between men and women in compensation or benefits.⁴⁰

Today, the Equal Remuneration Act's principles are incorporated into the broader Code on Wages, 2019. Under this Code, employers must pay identical rates for work of the same or comparable nature, covering all wage components, basic pay, allowances, bonuses, and other benefits, regardless of gender. Concurrently, the Maternity Benefit (Amendment) Act, 2017, extended paid maternity leave to 26 weeks and included adoptive and commissioning mothers, recognizing that true equality requires supportive measures around childbirth and caregiving.⁴¹

Judicial interventions have further strengthened gender justice at work. In **Vishakha v. State of Rajasthan**,⁴² the Supreme Court ruled that sexual harassment infringes on women's right to equality and occupational safety, laying down guidelines that led to the POSH Act, 2013. This law mandates employers to set up Internal Complaints Committees, conduct awareness programs, and ensure safe workplaces. Subsequent rulings have clarified what constitutes "comparable work" and "compensation," ensuring benefits like bonuses and overtime cannot be withheld on gender grounds.

Despite these reforms, women still face hurdles: employers sometimes view maternity benefits as a "burden," leading to hiring biases; outdated restrictions, such as prohibitions on women's night work, persist in some sectors, though the Factories Act now allows night shifts with proper safety measures. Women also shoulder disproportionate unpaid care work, limiting their participation in higher-paying roles. To advance their rights, employers should conduct gender audits, revise job evaluations to eliminate undervaluation of female-dominated roles, and ensure unbiased promotions. Labour inspectors must enforce the Code on Wages and the POSH Act, while skill-development programs should target women for non-traditional trades. Embedding gender justice in labour laws is not only a constitutional and international obligation but also vital for India's social and economic progress.

Gender-Inclusive Worker Compensation

The Workmen's Compensation Act of 1923 was India's first step toward protecting workers injured "in the course of" employment, awarding compensation based on injury severity and average wages, with higher earners receiving larger pay outs and death benefits calculated by the deceased's salary. Yet, this framework often excluded or disadvantaged women, especially those in informal or low-paid roles, since their injuries were undervalued and dependency rules favoured male breadwinners. In response, India repealed the 1923 Act and enacted the Employees' Compensation Act, 2017, which broadens coverage to include unorganized, contract, and informal workers, many of whom are women, and mandates uniform, prompt payment of medical costs. By expanding the definition of "dependent" to include all spouses and children equally, the modern law ensures that women, whether as injured workers or bereaved family members, can claim benefits without gender bias. Although outreach and enforcement continue to be challenges in rural and informal settings, this shift from a male-centric model to an inclusive scheme marks a significant advance in gender-just labour protections.

Ensuring Minimum Wages under the Code on Wages, 2019

The Minimum Wages Act of 1948 was introduced to protect workers from being paid less than a basic, liveable wage in a competitive labour market. Under Section 3 of the Minimum Wages Act, 1948, the central government is empowered to fix minimum wage rates for employment under its jurisdiction (such as mines, oilfields, major ports, and any establishment governed by central law), while state governments set minimum rates for scheduled employments within their territories. The purpose of Section 3 is to ensure that no worker is paid below a basic, legally prescribed floor wage, thereby preventing exploitation.⁴³

Section 2(b) defines "minimum rates of wages" as wages sufficient to secure the worker and their family not only against starvation but also to cover education, medical needs, and other essentials that preserve a worker's efficiency.⁴⁴ Section 5 requires these rates to be reviewed periodically at least once every five years so they reflect changes in the cost of living and local economic conditions.⁴⁵ Section 6 penalizes employers who pay less than the notified minimum, while Section 17 prescribes penalties for obstruction of inspectors or false reporting.⁴⁶

In 2019, the core provisions of this Act were subsumed into the Code on Wages, which retains Section 3's framework now read as a mandate for "floor wages" and continues to demand periodic revision (per the Code's equivalent of Section 5) to cover basic food, education, and healthcare costs. By embedding these sections into the Code on Wages, the law upholds the original intent of the 1948 Act: guaranteeing every worker a dignified, liveable wage.

Empowering Rural Women under the NREGA Framework

The National Rural Employment Guarantee Act, 2005 (NREGA) guarantees 100 days of paid, unskilled labour each financial year to any rural household whose members volunteer for work. By designating women as the preferred recipients of job cards, NREGA not only ensures that at least one-third of all positions go to female workers but also mandates equal pay for men and women. The Act incorporates gender-sensitive provisions such as safe drinking water at worksites, on-site childcare, shaded rest areas, and work sites within two kilometres of villages to address the unique challenges faced by women. Beyond offering a vital source of income, NREGA enhances women's bargaining power in their households, improves their access to health and nutrition, and fosters greater social and economic inclusion in rural India.⁴⁷

Role of the Judiciary in Advancing Gender Justice for Women Workers

The Indian judiciary has played a pivotal role in dismantling discriminatory practices and interpreting labour laws in a manner that furthers gender equality. Through a series of landmark judgments, courts have struck down arbitrary provisions that undermined women's rights, reaffirmed statutory entitlements, and upheld the principle that women deserve the same protections and opportunities as men in the workplace. Below are some key decisions that illustrate how judicial intervention has helped shape a more equitable labour landscape for women:

In the Life Insurance Corporation v. Neera Mathur⁴⁸, Neera Mathur joined LIC as a probationary employee and duly availed of her maternity leave. Upon returning to work, LIC dismissed her on the grounds that she had allegedly made a false declaration during hiring. The Supreme Court found this to be an unreasonable pretext: demanding detailed medical disclosures about pregnancy, especially in the delicate columns of a form, was both intrusive and humiliating. By setting aside the termination, the Court underscored that maternity leave is a protected right, and an employer cannot penalise a woman for exercising it. **Punjab National Bank v. Astamija Dash**.⁴⁹ In this case, a female employee of Punjab National Bank sought maternity leave in accordance with the Maternity Benefit Act of 1961. The Bank initially refused, citing operational difficulties. The Supreme Court reaffirmed that a woman is entitled to her full leave period, even if it requires temporary adjustments in staffing or duties. The Court clarified that, during maternity leave, no woman should be forced to work or forfeit any benefits. This ruling reinforced that maternity protections are sacrosanct and cannot be overridden by an employer's convenience. **Ashok Kumar v. State of Rajasthan**,⁵⁰ Here, a lower court had dismissed the testimony of a female doctor simply because of her gender, implying that a "lady doctor" was less credible. The Supreme Court forcefully rejected this bias, holding that discarding evidence solely because the witness was a woman violated her fundamental right to equality. By doing so, the High Court emphasised that judicial processes themselves must be free of gender prejudice—an essential principle when women bring workplace grievances before the courts. **Air India v. Nargesh Mirza**,⁵¹ Under Regulation 46(c) of Air India's service rules, any air hostess who became pregnant within four years of service was required either to quit her job or forgo her career upon marriage. Nargesh Mirza challenged this clause, arguing it was inherently discriminatory. The Supreme Court agreed: whether a woman continued working after childbirth or chose to leave was her personal decision, not the airline's. By striking down the regulation, the Court dismantled an institutional policy that treated pregnancy as a ground for compulsory termination.

Rajasthan State v. Ram Prasad and Another,⁵² In this tragic instance, a worker was struck and killed by natural lightning while on the job. The employer argued that since lightning was an "Act of God," it could not be held liable under the Workmen's Compensation framework. The Supreme Court disagreed, holding that if an injury or death occurs during the course of employment—even by natural forces—there is still a causal link to the workplace. This decision reinforced that women (and all workers) injured on the job, regardless of the cause, deserve fair compensation, without employers escaping liability through technicalities. **M/s Mackenzie & Co. Ltd. v. Audrey D'Costa & Others**,⁵³ Mackenzie & Co. paid its female stenographers less than male counterparts, arguing that women were inherently "confidential" typists and thus a separate class. The Supreme Court ruled that such a distinction was arbitrary and violated the principle of equal pay for equal work. It held that being a woman did not inherently make one a different "category" of stenographer—there was simply no justification for a lower wage. This decision cemented the rule that employers cannot create fictitious job categories to deny women their lawful earnings. **Tirath Kaur v. KirpalSingh**,⁵⁴

While this judgment arose under family-law principles, its implications rippled into the world of women's employment rights. Mrs. Tirath Kaur chose to work away from her husband's home, prompting him to file for restitution of conjugal rights when she refused to abandon her job. The Punjab High Court held that insisting a wife forsake her lawful work to live with her husband amounted to unreasonable interference with her autonomy. By recognizing that a woman's choice to pursue employment is not "desertion," the Court indirectly affirmed that women have the right to economic independence and cannot be coerced into giving it up for patriarchal notions of marital duty.

Together, these rulings illustrate the judiciary's evolving commitment to gender justice in India's labour laws. By invalidating discriminatory clauses, protecting maternity entitlements, ensuring fair compensation for workplace injuries, and upholding women's autonomy in both family and professional spheres, courts have been critical in translating legislative promises into lived reality. Each judgment not only rectified an individual wrong but also set a precedent that guides employers, labour authorities, and lower courts toward a more inclusive, equitable workplace for all women.

Conclusion

“Just as a bird could not fly with one wing only, a nation would not march forward if the Women are left behind.”

- Swami Vivekananda⁵⁵

India has built a robust legal framework aimed at protecting women from age-old injustices, from the abolition of cruel practices such as sati and child marriage to detailed labour laws that recognise women’s unique needs. Statutes like the Maternity Benefit Act and the Employees’ State Insurance Act have opened doors for many women to work with dignity and security. Yet laws alone cannot uproot deeply ingrained biases. In countless villages and cities, women still struggle against social norms that undervalue their contributions, tolerate violence, and limit their choices. True progress will only come when families, communities, employers, and policymakers actively challenge these prejudices when a girl’s education is championed as fervently as her brother’s, when a working mother is applauded rather than pitied, and when every woman feels safe to speak up without fear. Only by pairing our legal victories with a fundamental shift in attitude, affirming that women are not exceptions but equals, can India fulfil its promise of gender justice. The journey is ongoing, and each step toward respect, opportunity, and safety for women brings us closer to a society that honours the dignity of every citizen.

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1. Alfred Tennyson, who became the 1st Baron Tennyson and was a Fellow of the Royal Society, was born on 6 August 1809 and passed away on 6 October 1892. Renowned as one of England’s great poets, he served as Poet Laureate for much of Queen Victoria’s reign. Early in his career, while still at Cambridge, he won the Chancellor’s Gold Medal in 1829 for his poem *Timbuktu*.
2. The Sati Abolition Act of 1829, ended the forced immolation of widows, asserting women’s individual rights against patriarchal norms. Though a social reform, it set an important precedent: the state must protect women’s autonomy. This principle later influenced labour laws.
3. The Widow Remarriage Act of 1856 broke through rigid social taboos by allowing widows to remarry, affirming their right to personal and economic agency. In the arena of labour rights, this early recognition of widows as independent individuals set a tone for later rules that view women workers not as dependents but as autonomous contributors..
4. The Child Marriage Restraint Act of 1929, raised the minimum marriageable age, protecting young girls from premature household and economic burdens. By recognising the harm caused by child marriage, it underscored the idea that women must be allowed to mature before entering roles that affect their work and livelihood. This early legal step bolstered the view that women workers deserve safe conditions and fair opportunities, free from age-related exploitation. Its ethos resonates today in labour laws that promote education, skill development, and protection against underage employment for girls.
5. The Dowry Prohibition Act of 1961, outlawed the exchange of dowry, challenging the commodification of women and affirming their economic dignity. By criminalizing a practice that often traps women in financial and social dependency, it reinforced the principle that women deserve fair treatment and autonomy. This stance paved the way for labour laws that reject gender-based financial exploitation, such as policies ensuring equal pay and safeguarding against employer demands for dowry-like gifts. Its legacy endures in efforts to create workplaces where women’s rights and contributions are valued on their own merit.
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10. *The Constitution of India*, art. 15(3).
11. *The Constitution of India*, art. 16.
12. *The Constitution of India*, art. 74th Amendment.
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23. *Occupational Safety, Health and Working Conditions Code, 2020, S. 79.*
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28. *Occupational Safety, Health and Working Conditions Code, 2020, S. 84*
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53. (AIR 1987 SC 1281; 1987 SCC (2) 469)
54. (1964 Punj 29)
55. He was born in 1863. Swami Vivekananda was an Indian monk and social reformer who helped share Vedanta and Yoga with Western audiences. He rose to international fame after speaking at the 1893 World's Parliament of Religions in Chicago. He passed away in 1902.