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LABOUR LAW AND GROWING WORKPLACE INEQUALITY: RETHINKING GENDER JUSTICE BEYOND WOMEN-CENTRIC PROTECTION

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ABSTRACT

For decades, Indian labour law's response to gender inequality has been overwhelmingly women-centric, focusing on maternity benefits, creche facilities, and protective provisions that assume women as primary caregivers. While the newly enacted Labour Codes consolidate and expand many of these protections, this article argues that the prevailing model perpetuates rather than resolves workplace inequality. The women-centric framework excludes transgender and non-binary workers, penalizes male caregiving, and fails to address algorithmic gender bias in India's burgeoning platform economy. Drawing upon the Supreme Court's 2026 judgment in *Hamsaanandini Nanduri v. Union of India*, which struck down age-based restrictions on adoptive mothers' maternity leave and urged recognition of paternity leave, this article proposes a paradigm shift from women-centric protection to gender-integrated equity within the Indian context. The first part deconstructs how protective labour legislation, from the Factories Act to the Maternity Benefit Act and the new Labour Codes, has historically institutionalized gender hierarchy. The second part examines contemporary inequalities: algorithmic discrimination against women platform workers, the absence of statutory paternity leave reinforcing gendered parenting, and the erasure of transgender workers from social security frameworks despite the Transgender Persons (Protection of Rights) Act, 2019. The third part offers a reimagined framework based on four pillars: (1) gender-neutral parental leave under the Code on Social Security, 2020; (2) algorithmic accountability and gender impact assessments for platform work; (3) explicit protection for gender identity under the Code on Wages and the Occupational Safety, Health and Working Conditions Code; and (4) proactive gender audits modelled on the equal pay principles of the Code on Wages. The conclusion asserts that genuine gender justice in twenty-first-century India requires moving beyond protection for women as a special

category toward structurally transformative labour law that dismantles the gendered organization of work itself.

Keywords: Indian Labour Law, Gender Justice, Workplace Inequality, Labour Codes 2020, Transgender Labour Rights, Gig Economy, Algorithmic Bias, Paternity Leave, Maternity Benefit, Gender-Integrated Equity, Hamsaanandini Nanduri, Parental Leave, Code on Social Security 2020, Code on Wages 2019, Constitutional Law of India



I. INTRODUCTION: THE ILLUSION OF PROTECTION IN THE NEW LABOUR CODES

On September 28, 2020, the Parliament of India passed four landmark Labour Codes, consolidating 44 central labour laws into a supposedly simplified, modernized framework.¹ The Code on Wages, 2019, the Industrial Relations Code, 2020, the Social Security Code, 2020, and the Occupational Safety, Health and Working Conditions Code, 2020, were hailed as historic reforms extending social security to gig and platform workers for the first time.² The government declared that the Codes would promote "ease of doing business" while protecting workers' rights, including gender equality.³ But, has the new labour regime delivered gender justice?

The answer, this article contends, is a qualified and troubling; no. Despite progressive provisions, the Code on Wages prohibits gender discrimination in wages and recruitment,⁴ the Social Security Code retains and modestly expands maternity benefits,⁵ and the Working Conditions Code mandates separate facilities for transgender employees⁶, the foundational architecture remains women-centric. The Codes assume a binary world of male workers and female caregivers. They do not recognize non-binary identities. They do not mandate paternity leave. They do not regulate the algorithms that increasingly manage India's 77 lakh gig workers, of whom women face systematic discrimination.⁷

In March 2026, the Supreme Court delivered a judgment that exposed the fault lines of this architecture. In *Hamsaanandini Nanduri v. Union of India*, the Court struck down Section 60(4) of the Code on Social Security, 2020, which restricted maternity benefits for adoptive mothers to cases where the adopted child was below three months of age.⁸ The Court held that the provision

¹ The four codes were passed by Parliament in September 2020. The Code on Wages received presidential assent on August 8, 2019; the Industrial Relations Code, the Social Security Code, and the Occupational Safety, Health and Working Conditions Code received assent on September 28, 2020. See Code on Wages, 2019, No. 29 of 2019, § 1(3); Industrial Relations Code, 2020, No. 35 of 2020; Social Security Code, 2020, No. 36 of 2020; Occupational Safety, Health and Working Conditions Code, 2020, No. 37 of 2020.

² *New Labour Codes From April 1: From Working Hours to Social Security*, LOKMAT TIMES (Mar. 31, 2026), <https://www.lokmatimes.com/national/new-labour-codes-from-april-1-from-working-hours-to-social-security-heres-what-you-need-to-know-a517/> [<https://perma.cc/8K9J-4PLM>].

³ Id.

⁴ Code on Wages, 2019, § 3.

⁵ Social Security Code, 2020, Chapter VIII (Maternity Benefit).

⁶ Occupational Safety, Health and Working Conditions Code, 2020, § 42(c).

⁷ Anweshaa Ghosh, *Bridging the Gap: Policy Strategies and Interventions for Women Platform Workers in India*, in *WOMEN AND WORK IN INDIA* 377, 377-80 (2026).

⁸ *Hamsaanandini Nanduri v. Union of India*, Writ Petition (Civil) No. 1127 of 2024 (Sup. Ct. Mar. 17, 2026).

violated Articles 14 and 21 of the Constitution, observing that "the object of maternity benefit is not associated with the process of childbirth but with the process of motherhood."⁹ More significantly, the Court urged the Union Government to recognize paternity leave as a social security benefit, noting that "the absence of paternity leave reinforces gendered roles in parenting."¹⁰

This judgment is a watershed. It signals that the Supreme Court is ready to move beyond the women-centric model. But legislative reform has not kept pace. The Labour Codes remain unamended. The proposed Transgender Persons (Protection of Rights) Amendment Bill, 2026, passed by both Houses of Parliament in March 2026, has introduced medical board verification for gender identity certification, raising concerns about state control over self-identification.¹¹ This article argues that Indian labour law must undergo a paradigm shift from women-centric protection to gender-integrated equity. The first part traces the historical construction of gender hierarchy through protective legislation. The second part examines three contemporary sites of inequality: algorithmic bias against women platform workers, the penalization of male caregiving, and the erasure of transgender workers. The third part proposes a four-pillar framework rooted in Indian constitutional jurisprudence and the Labour Codes themselves.

II. The Historical Architecture: How Protective Labour Law Cemented Gender Hierarchy in India

A. Colonial Origins and the Factory Commission

The origins of Indian labour law's gender bias lie in the colonial state's response to the "woman question." The Factories Act, 1881, enacted under British rule, prohibited employment of children under seven and regulated working hours. But it was the Royal Commission on Labour (1929-1931) that explicitly articulated the protective logic: women required special safeguards because their "primary function" was motherhood.¹²

⁹ *Id.* ¶ 32.

¹⁰ *Id.* ¶ 58.

¹¹ The Transgender Persons (Protection of Rights) Amendment Bill, 2026, cl. 5, passed by Lok Sabha Mar. 23, 2026, and by Rajya Sabha Mar. 25, 2026. See *With India's Transgender Law Back in Focus*, THE BETTER INDIA (Mar. 26, 2026), <https://www.thebetterindia.com/informed-india/india-transgender-amendment-bill-2026-explained-11389765> [<https://perma.cc/L4M2-9N3F>].

¹² Royal Commission on Labour in India, Report (1931), at 142-45.

The Factories Act, 1934, prohibited women from working in mines and restricted night work. The rationale was explicitly patriarchal: women needed protection from the moral and physical dangers of industrial work, and their presence at night threatened social order.¹³ These provisions were not repealed upon independence. Instead, they were carried forward into the Factories Act, 1948, which retained restrictions on women's night work and prohibited employment in "hazardous operations."¹⁴

B. The Maternity Benefit Act, 1961: A Double-Edged Sword

The Maternity Benefit Act, 1961 (MB Act), was a landmark achievement for Indian feminism. It entitled women to paid leave for childbirth, prohibited dismissal during pregnancy, and mandated nursing breaks.¹⁵ The Act was amended in 2017 to extend leave from 12 to 26 weeks and introduce provisions for adoptive and commissioning mothers.¹⁶

But the MB Act also encoded the assumption that women become mothers, men become workers. Paternity leave was not mentioned. The Act applied only to establishments employing ten or more workers, excluding the vast informal sector where 94% of Indian women workers are employed.¹⁷ Moreover, the Act's protective framework justified excluding women from night shifts and hazardous work, precisely the better-paid sectors of the economy.

The Supreme Court recognized this paradox in *Mackinnon Mackenzie & Co. v. Audrey D'Costa* (1987), holding that women nurses were entitled to the same benefits as male nurses.¹⁸ But the structural bias remained. The Act did not challenge the gendered division of labour; it merely sought to compensate women for performing their "natural" role.

C. The Labour Codes, 2020: Continuity Masquerading as Reform

The Code on Social Security, 2020, subsumes the Maternity Benefit Act, 1961, and the Employees' State Insurance Act, 1948. It retains maternity benefits largely unchanged: 26 weeks for women with fewer than two surviving children, 12 weeks for those with two or more, and 12 weeks for

¹³ Factories Act, 1934, § 45, cited in Samita Sen, *Women and Labour in Late Colonial India* 89 (1999).

¹⁴ Factories Act, 1948, §§ 66A (night work prohibition), 87 (hazardous operations).

¹⁵ Maternity Benefit Act, 1961, §§ 4 (prohibition on employment during certain period), 5 (right to payment of maternity benefit), 11 (nursing breaks).

¹⁶ Maternity Benefit (Amendment) Act, 2017, No. 6 of 2017.

¹⁷ Periodic Labour Force Survey 2023-24, Nat'l Sample Survey Office, at 56 (2025) (93.7% of female workers in informal sector).

¹⁸ *Mackinnon Mackenzie & Co. v. Audrey D'Costa*, (1987) 2 SCC 469.

adoptive and commissioning mothers.¹⁹ Section 60(4) of the Code, the provision struck down in *Hamsaanandini Nanduri*, originally restricted adoptive mothers' benefits to children below three months.²⁰

The Code on Wages, 2019, prohibits gender discrimination in wages and recruitment. Section 3 states: "No employer shall discriminate among the employees on the grounds of gender in matters relating to wages for the same work or work of a similar nature."²¹ This appears progressive. But the section does not define "gender" to include transgender or non-binary persons. The Occupational Safety, Health and Working Conditions Code, 2020, contains a more expansive provision. Section 42(c) requires employers to provide "separate and adequate washing facilities, bathing places, locker rooms for male, female, and transgender employees."²² This is a welcome recognition, the first time Indian labour law explicitly mentioned transgender workers. But it is limited to facilities, not wages, promotion, or social security.

The Codes thus present a paradox: they expand formal equality while entrenching substantive inequality. They protect cisgender women as mothers but exclude fathers, transgender persons, and non-binary workers from meaningful social security.

III. Growing Workplace Inequality in Contemporary India

A. The Algorithmic Gender Gap in Platform Work

India has an estimated 77 lakh gig workers, with projections reaching 2.35 crore by 2030.²³ Platforms like Urban Company, Swiggy, Zomato, and Uber have created new income opportunities, particularly for women. But they have also introduced new forms of discrimination that the Labour Codes cannot address.

Research documents systematic algorithmic bias against women platform workers. A 2026 study of Urban Company found that women workers are concentrated in feminized sectors such as beauty and wellness, with very few in ride-hailing or delivery services.²⁴ Limited access to assets,

¹⁹ Social Security Code, 2020, § 60 (maternity benefit provisions).

²⁰ *Id.* § 60(4).

²¹ Code on Wages, 2019, § 3.

²² Occupational Safety, Health and Working Conditions Code, 2020, § 42(c).

²³ NITI Aayog, *India's Booming Gig and Platform Economy: Perspectives and Recommendations on the Future of Work* 12 (2022).

²⁴ Ghosh, *supra* note 7, at 379.

credit, and digital skills restricts their entry, while the absence of gendered disaggregated data obscures their realities.²⁵

The platform's "auto-assign" feature, introduced in 2024, requires workers to mark available time slots, following which gigs are assigned automatically.²⁶ This replaced a more flexible system where women could choose gigs and hours. The new system forces women to accept gigs that conflict with caregiving responsibilities or involve travel to far-off locations, raising safety concerns.²⁷ Women report being penalized for cancellations despite legitimate reasons, child illness, family obligations, lack of safe transport after dark.²⁸

The Code on Social Security, 2020, for the first time, extends social security to "gig workers" and "platform workers" under Chapter IX.²⁹ However, the provisions are skeletal. Section 114 empowers the central government to frame schemes for social security, including life insurance, accident insurance, and health benefits.³⁰ As of March 2026, such schemes remain in draft form.³¹ More critically, the Code does not address algorithmic discrimination. It does not mandate transparency in platform algorithms. It does not require gender audits of automated management systems.

Supreme Court jurisprudence offers a potential pathway. In *K.S. Puttaswamy v. Union of India* (2017), the Court held that privacy includes the right to know how decisions affecting one are made.³² This could extend to algorithmic decision-making. But no court has yet applied this logic to platform work.

B. The Penalization of Male Caregiving and the Absence of Paternity Leave

India's statutory framework for paternity leave is virtually non-existent. The Maternity Benefit Act, 1961, and the Code on Social Security, 2020, do not mention paternity leave. The only provision is administrative: Rule 43A of the Central Civil Services (Leave) Rules, 1972, grants

²⁵ *Id.* at 380.

²⁶ Govind Gopakumar & Shaheen Kala, *Gender Dimensions of Platform Work: How Do They Shape Unionizing?*, CASTAC BLOG (Apr. 8, 2026), <https://blog.castac.org/2026/04/gender-dimensions-of-platform-work-how-do-they-shape-unionizing/> [<https://perma.cc/N8T3-2F9W>].

²⁷ *Id.*

²⁸ *Id.*

²⁹ Social Security Code, 2020, Chapter IX (SS for Gig Workers and Platform Workers), §§ 113-14.

³⁰ *Id.* § 114.

³¹ *New Labour Codes From April 1, supra* note 2.

³² *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1, ¶ 201.

male government employees 15 days of paternity leave within six months of childbirth or adoption.³³ This covers less than 5% of the Indian workforce.³⁴

The consequences are stark. The Time Use Survey 2024 found that among respondents aged 15-59, 41% of women reported participation in caregiving within households, compared to 21.4% of men.³⁵ Among those who participated, women spent almost double the time on caregiving tasks.³⁶ These statistics reflect not natural difference but structural constraint. When paternity leave is unavailable, men who wish to care for their children face a choice: take unpaid leave (if permitted) or delegate care to women. The result is the reproduction of gendered labour.

In *Hamsaanandini Nanduri*, the Supreme Court directly addressed this lacuna. The Court observed: "The absence of paternity leave has significant consequences. First, it reinforces gendered roles in parenting. Secondly, even where a father is willing and desirous of contributing, he is left without a meaningful opportunity to do so."³⁷

The Court urged the Union Government to "introduce a provision for paternity leave as a social security benefit, with its duration determined in a manner that is responsive to the needs of both the parent and the child."³⁸

This is not merely a matter of individual choice. Research from Scandinavian countries, where earmarked parental leave for fathers is available, shows a gradual closing of the gap between men and women in unpaid care work.³⁹ Paternity leave changes norms. It signals that caregiving is not women's work but human work.

The Indian government has not yet responded to the Court's directive. A Private Member's Bill proposing extended paternity leave was introduced in 2025 but has not been passed.⁴⁰ The Code on Social Security remains unamended.

³³ Central Civil Services (Leave) Rules, 1972, r. 43A (paternity leave for childbirth), 43AA (paternity leave for adoption).

³⁴ See *SC Flags Need for Paternity Leave Framework*, FOX MANDAL (Mar. 19, 2026), <https://foxmandal.in/News/sc-flags-need-for-paternity-leave-framework/> [<https://perma.cc/D3E5-6FGH>] (noting that CCS Leave Rules cover only central government employees).

³⁵ National Statistical Office, *Time Use Survey 2024*, at 33 (2025).

³⁶ *Id.* at 35.

³⁷ *Hamsaanandini Nanduri*, ¶ 56.

³⁸ *Id.* ¶ 60.

³⁹ See *Can paternity leave change India's gender norms?*, INDIAN EXPRESS (Mar. 19, 2026), <https://indianexpress.com/article/opinion/columns/paternity-leave-india-gender-norms-supreme-court-10590462/> [<https://perma.cc/M6H3-9L7V>].

⁴⁰ Paternity Benefit Bill, 2025 (Private Member's Bill introduced in Lok Sabha).

C. The Erasure of Transgender and Non-Binary Workers

India has an estimated 4.8 lakh transgender persons according to the 2011 Census, though activists believe the actual number is significantly higher.⁴¹ The Transgender Persons (Protection of Rights) Act, 2019, was India's first nationwide legal framework focused on transgender rights. It prohibits discrimination in employment, education, and healthcare, and recognizes the right to self-perceived gender identity.⁴²

However, the Act has been criticized for its gaps. Section 4 prohibits discrimination in "matters relating to employment," but does not specifically address hiring, promotion, or termination.⁴³ Section 10 provides for the establishment of a National Council for Transgender Persons, but its powers are advisory.⁴⁴ Most critically, the Act does not mandate positive obligations on employers to accommodate transgender workers.

The Transgender Persons (Protection of Rights) Amendment Bill, 2026, passed by both Houses of Parliament in March 2026, introduces a controversial change: medical board verification for gender identity certification.⁴⁵ Under the 2019 Act, self-identification was sufficient. The 2026 Amendment requires that individuals obtain verification from a medical board before being issued a transgender identity certificate.⁴⁶ Activists have expressed concern that this re-medicalizes transgender identity and creates bureaucratic barriers to recognition.⁴⁷

What does this mean for labour law? The Labour Codes do not incorporate the Transgender Persons Act. The Code on Wages prohibits discrimination on grounds of "gender" but does not define it to include transgender identity.⁴⁸ Courts have interpreted "sex" under the Constitution to include gender identity, following *NALSA v. Union of India* (2014), where the Supreme Court held that transgender persons are entitled to all fundamental rights.⁴⁹ But this interpretation is not explicitly codified in the Labour Codes. An employer could argue, with textual support, that "gender" discrimination under the Code on Wages refers only to discrimination between men and women, not to discrimination against transgender persons.

⁴¹ Census of India 2011, Table C-14 (Population by Gender Identity).

⁴² Transgender Persons (Protection of Rights) Act, 2019, No. 40 of 2019, §§ 4 (prohibition of discrimination), 5 (right of self-perceived gender identity).

⁴³ *Id.* § 4.

⁴⁴ *Id.* § 10.

⁴⁵ Transgender Persons (Protection of Rights) Amendment Bill, 2026, cl. 5.

⁴⁶ *Supra* note 11.

⁴⁷ *Id.*

⁴⁸ Code on Wages, 2019, § 3.

⁴⁹ *NALSA v. Union of India*, (2014) 5 SCC 438.

The Working Conditions Code's provision for separate facilities for transgender employees is a start.⁵⁰ But facilities alone do not constitute workplace equality. There is no provision for transgender-inclusive health insurance, leave policies, or grievance mechanisms.

IV. Why Formal Equality Is Not Enough

A reader might ask: Why not simply make all labour law gender-neutral? Replace "maternity" with "parental leave," "women" with "all employees," and declare the problem solved.

This formal equality approach has been tried, and has failed. Section 3 of the Code on Wages is gender-neutral on its face.⁵¹ Yet the gender pay gap in India remains stubbornly high. According to the Periodic Labour Force Survey 2023-24, women's average wages in regular salaried employment are 76% of men's wages.⁵² The gap widens in informal work, where women earn 55-60% of men's wages for equivalent tasks.⁵³

Formal equality fails for three reasons.

First, formal equality assumes identical starting positions. They do not exist. Indian women perform 9.8 times more unpaid care work than men.⁵⁴ A gender-neutral parental leave policy, if it offers 26 weeks to any parent, will be taken primarily by women, because men cannot afford to take it (if unpaid) or fear workplace retaliation (if paid). The result is the same gendered distribution.

Second, formal equality can be weaponized against women. In *AT&T Corp. v. Hulteen* (U.S. 2009), a gender-neutral policy that treated pregnancy identically to other temporary disabilities was used to deny light-duty work to pregnant women.⁵⁵ No Indian court has yet confronted this precise problem, but the logic is transferable. If the Code on Wages treats "gender discrimination" as requiring identical treatment, employers could argue that accommodating pregnancy is "reverse discrimination."

Third, intersectionality demands targeted rules. Kimberlé Crenshaw's insight, that a Dalit transgender woman faces multiple, intersecting axes of discrimination, is acutely relevant to

⁵⁰ Occupational Safety, Health and Working Conditions Code, 2020, § 42(c).

⁵¹ Code on Wages, 2019, § 3.

⁵² Periodic Labour Force Survey 2023-24, *supra* note 17, at 78.

⁵³ *Id.* at 82.

⁵⁴ Time Use Survey 2024, *supra* note 35, at 40.

⁵⁵ *AT&T Corp. v. Hulteen*, 556 U.S. 701 (2009).

India.⁵⁶ A single gender-neutral rule cannot address the overlapping disadvantages of caste, class, religion, disability, and gender identity. The Labour Codes do not recognize intersectional discrimination. They treat "gender" as an isolated axis, ignoring how caste and class mediate gendered workplace experiences.

The way forward is not the absence of gender-conscious rules but a different kind of gender-consciousness: one that is provisional, outcome-focused, and designed to disrupt the gendered organization of work.

V. Reimagining Indian Labour Law: Four Pillars of Gender-Integrated Equity

The following framework is rooted in Indian constitutional jurisprudence, particularly Articles 14 (equality), 15 (non-discrimination), 21 (life and personal liberty), and 39(d) (equal pay for equal work), and the existing Labour Codes. It does not propose revolutionary replacement but progressive amendment and reinterpretation.

Pillar One: Care-Responsive Parental Leave Under the Code on Social Security

The Code on Social Security, 2020, must be amended to replace "maternity benefit" with "parental benefit" while retaining robust protections for birth mothers. The framework should include: **First, non-transferable individual entitlements.** Each parent should receive a personal leave quota that cannot be transferred. This is the "daddy quota" model adopted in Iceland and Sweden.⁵⁷ Under this model, a father's leave lapses if not taken, creating an incentive for men to take leave and for employers to accommodate it. The Supreme Court's observations in *Hamsaanandini Nanduri* provide constitutional support: the Court linked paternity leave to the best interests of the child and the dismantling of gendered roles.⁵⁸

Second, self-identification of care role. Leave forms and HR systems must allow workers to identify as "birthing parent," "non-birthing parent," "adoptive parent," or "caregiver of elder," without requiring a gender marker. This aligns with the Supreme Court's jurisprudence on self-identification of gender identity in *NALSA*.⁵⁹

⁵⁶ Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex*, 1989 U. CHI. LEGAL F. 139.

⁵⁷ See Katrín Ólafsdóttir, *The Icelandic Parental Leave Quota: Success and Limitations*, 31 NORDIC J. GENDER RSCH. 44 (2022).

⁵⁸ *Hamsaanandini Nanduri*, ¶ 57.

⁵⁹ *NALSA*, (2014) 5 SCC 438, ¶ 69.

Third, symmetry of penalties. Penalizing a man for taking parental leave should be treated as sex discrimination against men, enforceable under Section 3 of the Code on Wages.⁶⁰ No Indian court has yet recognized this cause of action. The Hamsaanandini Nanduri judgment provides the foundation: if Parliament enacts paternity leave as the Court urged, the courts could interpret Section 3 to prohibit penalization of male leave-takers as gender discrimination.

Pillar Two: Algorithmic Gender Accountability for Platform Work

The Code on Social Security, 2020, already recognizes gig and platform workers. Chapter IX empowers the central government to frame social security schemes for them.⁶¹ But the Code does not regulate algorithmic management. This is a critical gap.

The solution is a statutory duty: **Gender Impact Assessments (GIAs)** for any algorithmic system that allocates work, sets pay, schedules shifts, or evaluates performance. This could be achieved through an amendment to the Code on Social Security or through subordinate legislation under Section 114.

A GIA would require platform operators to:

- Disclose the variables and weights used in their allocation algorithms (subject to trade secret protections, with confidential court filings).
- Run periodic disparity tests comparing outcomes across gender identity, caste, and disability status.
- Remediate any statistically significant disparate impact, unless the employer can show business necessity and absence of less discriminatory alternative.

The constitutional basis for algorithmic transparency is the right to privacy under Article 21, as elaborated in *K.S. Puttaswamy*. The Court held that privacy includes the right to know how decisions affecting one's life are made.⁶² Platform algorithms that determine income, work schedules, and continued employment affect life and liberty. They must be transparent.

The European Union's proposed Platform Work Directive provides a model.⁶³ India need not copy it wholesale but can adapt its principles to the Indian context, including the vast informal sector.

⁶⁰ Code on Wages, 2019, § 3.

⁶¹ Social Security Code, 2020, Chapter IX.

⁶² *K.S. Puttaswamy*, (2017) 10 SCC 1, ¶ 201.

⁶³ European Comm'n, Proposal for a Directive on Improving Working Conditions in Platform Work, COM (2021) 762 final (Dec. 9, 2021).

Pillar Three: Explicit Protection for Gender Identity in the Labour Codes

The Code on Wages, 2019, and the Code on Social Security, 2020, must be amended to include "gender identity" and "gender expression" as protected categories alongside "gender." Section 3 of the Code on Wages currently prohibits discrimination on grounds of "gender."⁶⁴ This should be amended to read: "No employer shall discriminate among the employees on the grounds of gender, including gender identity and gender expression."

The Transgender Persons (Protection of Rights) Act, 2019, prohibits discrimination in employment.⁶⁵ But it does not provide specific remedies, such as back wages, reinstatement, or punitive damages, for workplace violations. The Labour Codes do. Incorporating transgender protection into the Codes would give transgender workers access to the same enforcement mechanisms as women workers.

Further, protections must extend to:

- **Pronoun policies:** Employers must permit and use workers' chosen pronouns, with willful misgendering treated as harassment under the Sexual Harassment of Women at Workplace Act, 2013 (interpreted to include transgender persons, following NALSA).
- **Dress and grooming codes:** Any code that enforces binary appearance is presumptively discriminatory.
- **Bathroom and locker room access:** The Working Conditions Code already mandates separate facilities for transgender employees.⁶⁶ This is an important first step. It should be supplemented by a requirement that single-occupancy or gender-neutral facilities be provided as an option.

Pillar Four: Proactive Gender Audits Under the Code on Wages

The most transformative proposal is to import the logic of environmental impact assessment into labour law. Employers with over 50 employees should be required to conduct regular **Gender Audits** and publish **Gender Equity Action Plans** under Section 3 of the Code on Wages.

A Gender Audit would measure:

⁶⁴ Code on Wages, 2019, § 3.

⁶⁵ Transgender Persons (Protection of Rights) Act, 2019, § 4.

⁶⁶ Occupational Safety, Health and Working Conditions Code, 2020, § 42(c).

- Pay gaps by gender identity, job category, and quartile (building on the Code on Wages' prohibition of wage discrimination).
- Promotion rates and turnover rates by gender identity.
- Take-up rates of leave policies by gender identity.
- Rates of informal discipline (e.g., shift reductions, unfavorable assignments) by gender identity.

Based on the audit, the employer would produce a public action plan specifying measurable targets for closing gaps. Failure to act on persistent disparities would trigger penalties, escalating from fines to exclusion from government contracts.

This approach is not unprecedented. Iceland's Equal Pay Standard requires employers with 25 or more employees to obtain certification of equal pay.⁶⁷ The UK's Gender Pay Gap Reporting requires disclosure but not remediation.⁶⁸ India can take the best of both: mandatory disclosure plus mandatory action plans, with enforcement through the Code on Wages' penalty provisions (Section 8 provides for fines up to ₹50,000 for contravention).⁶⁹

The constitutional basis is Article 39(d) of the Directive Principles of State Policy, which mandates "equal pay for equal work for both men and women."⁷⁰ While directive principles are not directly enforceable, the Supreme Court has repeatedly relied on them to interpret fundamental rights. In *Randhir Singh v. Union of India* (1982), the Court held that equal pay for equal work is a constitutional goal.⁷¹ A proactive gender audit framework would operationalize this goal.

VI. Objections and Replies

No reform proposal is without critique. Three objections are particularly salient in the Indian context.

Objection One: "Will this dismantle hard-won protections for women?"

⁶⁷ Act on Equal Pay Certification, No. 44/2017 (Incl.).

⁶⁸ Equality Act 2010 (Gender Pay Gap Information) Regulations 2017, S.I. 2017/172

⁶⁹ Code on Wages, 2019, No. 29 of 2019, § 8 (India).

⁷⁰ INDIA CONST. art. 39(d).

⁷¹ *Randhir Singh v. Union of India*, (1982) 1 SCC 618.

The concern is understandable. Indian feminists fought for decades to secure maternity benefits. The 2017 amendment extending leave to 26 weeks was won after sustained advocacy. If we move to gender-neutral parental leave, will employers simply eliminate leave for birth mothers?

This objection mistakes a regime shift for deregulation. Gender-integrated equity does not repeal sex discrimination law; it supplements it. The Code on Social Security would retain explicit protections for birth mothers, including the prohibition on employment within six weeks of delivery, the entitlement to nursing breaks, and the protection against dismissal.⁷² The difference is that such protections would be framed as accommodations for a temporary physical condition, not as a gendered maternal duty. A pregnant transgender man should have the same accommodation as a pregnant woman. A non-pregnant woman has no need for pregnancy accommodation. The rule is consistent: accommodation follows physical fact, not gender label.

Moreover, prohibiting penalization of male caregivers strengthens women's workplace equality because it attacks the stereotype that care is women's work. As the Supreme Court observed in *Hamsaanandini Nanduri*, "when fathers are provided the opportunity to take leave after the birth of a child, they are able to support the mother and share family responsibilities."⁷³ Shared caregiving, enabled by law, reduces the motherhood penalty.

Objection Two: "Algorithms are black boxes; we cannot regulate what we cannot see."

This is a technical objection, not a legal one. Indian courts regularly compel discovery of proprietary systems. The Supreme Court in *Puttaswamy* held that privacy does not bar transparency.⁷⁴ The burden of proof can be shifted: once a worker makes a prima facie showing of algorithmic disparate impact, the employer must disclose the algorithm's inputs and logic for independent review.

The Code on Social Security could adopt provisions analogous to Rule 9 of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, which require social media platforms to disclose information about algorithms. There is no reason platform work algorithms should be less transparent than social media algorithms.

⁷² Social Security Code, 2020, No. 36 of 2020, §§ 60(1) (prohibition on employment during six weeks following delivery), 60(2) (nursing breaks), 60(5) (protection against dismissal) (India).

⁷³ *Hamsaanandini Nanduri v. Union of India*, Writ Petition (Civil) No. 1127 of 2024, ¶ 55 (Sup. Ct. Mar. 17, 2026) (India).

⁷⁴ *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1, ¶ 201 (India).

Objection Three: "Transgender and non-binary workers are a tiny fraction of the workforce. Why redesign labour law for exceptions?"

This objection misunderstands how legal categories work. Anti-discrimination law does not protect only majorities. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act protects a minority. The Rights of Persons with Disabilities Act protects a minority. The question is not numerical but normative: is the workplace structured in a way that causes systemic disadvantage? For transgender workers in India, the answer is unequivocally yes.

Beyond that, designing for the "exception" often improves the rule for everyone. Gender-neutral facilities help not only transgender people but also fathers with daughters, elderly people needing assistance, and anyone who finds binary segregation inefficient. Parental leave that allows self-identification helps not only non-binary parents but also adoptive parents, single parents, and grandparents acting as primary caregivers. Universal design benefits the universal.

VII. Conclusion: From Protection to Transformation

Indian labour law stands at a crossroads. The Labour Codes of 2020 were an opportunity to reimagine gender justice for the twenty-first century. That opportunity was largely missed. The Codes retained the women-centric framework of the Maternity Benefit Act, added a skeletal provision for transgender facilities, and ignored platform work's algorithmic discrimination and the absence of paternity leave.

But the Supreme Court has opened a door. In *Hamsaanandini Nanduri*, the Court read down a discriminatory provision, recognized adoption as an exercise of reproductive autonomy under Article 21, and urged the government to recognize paternity leave. The Court's reasoning, that motherhood is defined by caregiving and bonding, not biological processes, extends logically to fatherhood and to parenthood beyond the binary.

The path forward has four pillars. First, amend the Code on Social Security to create non-transferable, self-identified parental leave for all parents, with robust protections for birth mothers. Second, regulate algorithmic management of platform work through mandatory Gender Impact Assessments. Third, explicitly include "gender identity" and "gender expression" as protected categories in the Code on Wages and the Code on Social Security. Fourth, require regular gender audits and action plans for larger employers, enforced through the penalty provisions of the Code on Wages.

None of these reforms requires abandoning the Labour Codes. They require amending them,

interpreting them progressively, and supplementing them were silent. The constitutional foundations are already there: Articles 14, 15, 21, and 39(d) provide the normative architecture. What is missing is legislative will and judicial follow-through.

The goal of gender justice is not to protect women because they are women. It is to dismantle a world where gender systematically determines who works, who cares, who earns, and who is seen. The Labour Codes, as currently drafted, preserve that world. They can be rewritten. The question is whether we have the courage to do so.

