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GENDER JUSTICE IN INDIAN LABOUR LAWS: FROM PROTECTIVE LEGISLATION TO SUBSTANTIVE EQUALITY.

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1. Abstract

Gender justice in Indian labour law reflects a gradual yet complex transition from a framework of protective paternalism to one that aspires towards substantive equality. Traditionally, labour legislations were designed to safeguard women through special provisions, often rooted in assumptions of vulnerability that inadvertently restricted their participation in the workforce. With the evolution of constitutional jurisprudence and progressive judicial interpretation, the discourse has shifted towards recognising women as equal participants entitled to dignity, autonomy, and non-discrimination in employment. This paper critically examines this transformation with particular focus on the Code on Social Security, 2020, which represents a significant attempt to expand social security coverage to a wider workforce, including women in the unorganised and gig economy. The study analyses key aspects such as maternity benefits, welfare measures, and inclusion of non-traditional workers, while also highlighting persistent challenges relating to implementation, accessibility, and structural inequalities within the labour market. Drawing upon existing literature and legal analysis, it is argued that although the Code marks a progressive step towards inclusivity, it does not fully overcome the limitations of earlier protective frameworks. The persistence of informal employment, gender wage disparities, and limited enforceability of rights continues to hinder the realisation of substantive equality. The paper concludes that while Indian labour law has evolved in its approach to gender justice, achieving genuine and effective equality requires not only legislative reform but also stronger institutional mechanisms and a broader socio-economic transformation.¹

Keywords: *Gender Justice, Labour Law, Social Security Code 2020, Substantive Equality, Women Workers, Informal Sector*

¹ Vijay P Singh, "The Study of the Legal and Judicial Approach in India to the Problem of Gender Inequality in the Workplace" (2023) 65(3) International Journal of Law and Management 209

2. Research Methodology

The present study adopts a doctrinal and analytical research methodology, relying on secondary sources such as statutes, judicial decisions, and academic literature to examine the evolution of gender justice within Indian labour laws. The research critically evaluates the transition from protective legislation to a framework of substantive equality, with particular emphasis on the Code on Social Security, 2020, by analysing its provisions and their practical implications. Secondary data, including scholarly writings and policy analyses, are utilised to identify persistent challenges such as informal labour, implementation gaps, and gender-based disparities. As noted in existing literature, doctrinal research remains essential in understanding labour law frameworks, particularly in contexts where informal employment limits empirical data availability. The methodology thus combines legal interpretation with contextual analysis to assess whether contemporary labour reforms effectively advance substantive gender justice.²

3. Introduction

Gender justice, as a constitutional and legal ideal, extends beyond formal equality to encompass substantive equality, ensuring that individuals are provided equitable conditions to participate meaningfully in society. In the realm of labour law, this assumes particular importance, as the workplace has historically reflected structural inequalities that disadvantage women through wage disparities, occupational segregation, and limited access to social security. Labour rights, therefore, are not merely economic entitlements but are intrinsically linked to dignity, autonomy, and social recognition. However, as highlighted in contemporary scholarship, gender inequality in employment is shaped not only by legal deficiencies but also by socio-economic realities and cultural norms that continue to restrict women's participation, particularly within the informal sector where legal protections remain weak or inaccessible.³

Historically, Indian labour legislation adopted a protective approach, framing women as vulnerable workers requiring special safeguards through laws such as the Factories Act, 1948 and the Maternity Benefit Act, 1961. While these measures addressed immediate welfare concerns, they often reinforced paternalistic assumptions and limited women's employment opportunities. With the evolution of constitutional jurisprudence and judicial intervention,

² Mansi Nagyan, "Gender Justice and Indian Labour" (2021) 4 International Journal of Management and Humanities 851.

³ Vijay P Singh, "The Study of the Legal and Judicial Approach in India to the Problem of Gender Inequality in the Workplace" (2023) 65(3) International Journal of Law and Management 209.

particularly in *Vishaka v. State of Rajasthan*, the discourse gradually shifted towards a rights-based framework emphasising equality and dignity. This transition is further reflected in contemporary labour reforms, including the Code on Social Security, 2020, which seeks to expand social protection to a broader workforce. However, the critical question remains whether such reforms truly achieve substantive gender equality or merely reformulate earlier protective paradigms in a modern legislative form.⁴

4. Constitutional Framework Of Gender Equality

The foundation of gender justice in Indian labour law is deeply rooted in the constitutional guarantee of equality, which envisions not merely formal parity but the achievement of substantive fairness in social and economic relations. The Constitution of India, through its fundamental rights and directive principles, establishes a framework that seeks to dismantle structural inequalities and promote inclusive participation in all spheres of life, including employment. The interpretation of these provisions by the judiciary has played a crucial role in transforming gender justice from a theoretical ideal into an enforceable legal principle.⁵

At the core of this framework lies **Article 14**, which guarantees equality before the law and equal protection of the laws. This provision has been expansively interpreted to prohibit arbitrary state action and ensure fairness in legislative and administrative measures. In the context of labour law, Article 14 mandates that employment policies and practices must not discriminate on unjustifiable grounds, thereby forming the basis for challenging gender-based disparities in wages, recruitment, and working conditions. However, equality under Article 14 is not confined to identical treatment; it permits reasonable classification to address existing inequalities, thereby laying the groundwork for substantive equality.

Closely linked to this is **Article 15**, particularly clause (3), which empowers the State to make special provisions for women and children. This provision reflects the constitutional recognition that formal equality alone is insufficient to address historical disadvantages faced by women. Protective labour legislations have often been justified under **Article 15(3)**; however, the challenge lies in ensuring that such protections do not reinforce stereotypes or restrict women's economic participation. As judicial interpretation has evolved, the emphasis has shifted towards ensuring that special provisions function as tools of empowerment rather

⁴ "Gender Justice and Indian Labour" (2021)

⁵ The Constitution of India

than instruments of exclusion.

Article 16, which guarantees equality of opportunity in matters of public employment, further strengthens the constitutional commitment to gender justice. It prohibits discrimination on the basis of sex and ensures that women have equal access to employment opportunities within the public sector. While Article 16 directly applies to state employment, its underlying principle of non-discrimination has influenced broader labour jurisprudence, shaping policies and legal standards applicable to private employment as well.

The right to dignity, encompassed within **Article 21**, has emerged as a critical component of gender justice in the workplace. The judiciary has interpreted the right to life and personal liberty to include the right to live with dignity, free from harassment and discrimination. This expansive interpretation has been instrumental in recognising workplace safety and dignity as fundamental rights. A landmark development in this regard is the decision in *Vishaka v. State of Rajasthan*, where the Supreme Court laid down guidelines to address sexual harassment at the workplace, explicitly linking such protection to the fundamental rights under Articles 14, 15, and 21. The judgment marked a significant shift in recognising that gender justice is inseparable from workplace dignity and safety.⁶

In addition to fundamental rights, the Directive Principles of State Policy, particularly **Articles 39(d)** and **42**, reinforce the commitment to gender equality by directing the State to ensure equal pay for equal work and to provide just and humane conditions of work, including maternity relief. Although non-justiciable, these principles have guided legislative action and judicial interpretation, contributing to the development of a more equitable labour law framework.

Thus, the constitutional framework of gender equality in India reflects a dynamic interplay between formal guarantees and substantive aspirations. While the Constitution provides a robust foundation for gender justice, its realisation within labour laws depends on the effectiveness of legislative measures and their implementation. The transition from protective legislation to contemporary labour codes, including the Code on Social Security, 2020, must therefore be assessed in light of these constitutional principles, particularly the commitment to

⁶ *Vishaka v. State of Rajasthan & Ors* (1997) 6 SCC 241

dignity, equality, and non-discrimination.⁷

5. Protective Labour Legislation for Women

The evolution of gender justice within Indian labour law cannot be understood without examining the phase of protective labour legislation, which constituted the earliest legal response to women's participation in the workforce. These laws were enacted with the objective of safeguarding women from exploitation and hazardous working conditions; however, they were often premised on the assumption that women were inherently vulnerable and required special protection. While such an approach addressed certain immediate concerns, it simultaneously reinforced gender stereotypes and limited women's access to equal employment opportunities.⁸

1. Maternity Protection and Welfare

One of the most significant legislations in this regard is the Maternity Benefit Act, 1961, which was enacted to regulate the employment of women during maternity and to provide for maternity benefits. The Act recognises maternity as a social function and seeks to ensure that women are not compelled to choose between employment and motherhood. Judicial interpretation has further strengthened this right, as seen in cases such as Municipal Corporation of *Delhi v. Female Workers*, where maternity benefits were extended even to casual and daily wage workers.⁹

However, despite its progressive intent, the law has been critiqued for placing the financial burden of maternity benefits primarily on employers, which may inadvertently discourage the hiring of women. This reflects a broader issue within protective legislation, where measures intended to support women may, in practice, create barriers to their employment. As has been critically observed, "when protection translates into cost, it risks becoming a ground for exclusion rather than empowerment."

2. Equal Remuneration and Formal Equality

The Equal Remuneration Act, 1976 was enacted to address wage discrimination and to ensure equal pay for equal work for men and women. This legislation marked a shift towards

⁷ Mansi Nagyan, "Gender Justice and Indian Labour" (2021) 4 International Journal of Management and Humanities 851.

⁸ General labour law evolution and protective legislation framework.

⁹ Municipal Corporation of Delhi v. Female Workers AIR 2000 SC 224

recognising formal equality in the workplace and aligned with the constitutional mandate under Article 39(d). The judiciary has played an important role in enforcing this principle, particularly in *Mackinnon Mackenzie v. Audrey D'Costa*, where the Supreme Court emphasised that gender-based wage discrimination is unconstitutional.¹⁰

Nevertheless, the effectiveness of the Act has been limited by challenges in implementation and enforcement, especially within the informal sector where wage structures are often unregulated. The persistence of gender wage gaps indicates that legal provisions alone are insufficient to eliminate entrenched economic disparities.

3. Protective Restrictions under the Factories Regime

Protective provisions under the Factories Act, 1948 further illustrate the dual nature of such legislation. While the Act aimed to ensure safety and welfare by regulating working hours and conditions, it also imposed restrictions on women's employment, particularly in night shifts and hazardous industries. Although these restrictions were justified on grounds of safety, they have been criticised for limiting women's economic participation and reinforcing the notion that certain forms of work are unsuitable for women.

This paternalistic approach was critically examined by the Supreme Court in cases such as *Anuj Garg v. Hotel Association of India*, where the Court struck down gender-based restrictions on women's employment in establishments serving alcohol. The Court observed that such restrictions, though framed as protective, were rooted in stereotypes and failed to uphold the principle of equality.¹¹ This judgment marked a significant shift towards recognising women's autonomy and agency in the workplace.

Overall, protective labour legislation represents an important yet transitional phase in the development of gender justice in India. While these laws provided necessary safeguards in a historically unequal society, they also exposed the limitations of a framework that prioritised protection over empowerment. The challenge, therefore, lies in moving beyond paternalistic approaches towards a model that ensures substantive equality, where women are not merely protected but are enabled to participate fully and equally in the labour market. This transition becomes particularly relevant in the context of contemporary labour reforms, including the Code on Social Security, 2020, which seek to redefine the scope of labour protections in a more inclusive manner.

¹⁰ Mackinnon Mackenzie v. Audrey D'Costa (1987) 2 SCC 469

¹¹ Anuj Garg v. Hotel Association of India AIR 2008 SC 663.

6. Gender Justice under the Code on Social Security, 2020

The Code on Social Security, 2020 represents a significant legislative effort to redefine the contours of labour welfare in India by extending social security protections to a wider and more diverse workforce. Unlike earlier fragmented enactments, the Code adopts a comprehensive framework that seeks to integrate various welfare measures, including maternity benefits, social insurance, and welfare schemes, under a unified structure. This expansion is particularly relevant from the perspective of gender justice, as it acknowledges the increasing participation of women in both formal and informal sectors of employment. By recognising categories such as unorganised workers and gig and platform workers, the Code attempts to address long-standing exclusions that disproportionately affected women.¹² However, the true measure of gender justice lies not merely in legislative recognition but in the extent to which such provisions are accessible and effectively implemented in practice.

A central feature of the Code is its continued emphasis on maternity benefits and workplace support systems such as creche facilities, which reflect an understanding of the dual roles often performed by women as both workers and caregivers. While these provisions are essential in enabling women's participation in the labour market, their structural design raises critical concerns. The financial burden of maternity benefits remains largely employer-driven, which may inadvertently discourage the hiring and retention of women, thereby reinforcing indirect discrimination. Similarly, although creche facilities are mandated, their implementation remains inconsistent, particularly in sectors with weak regulatory oversight. This highlights a broader tension within labour law, where formal entitlements do not necessarily translate into substantive equality. As has been observed in legal scholarship, protection that is not accompanied by structural reform risks becoming “a conditional privilege rather than an enforceable right.”¹³

Moreover, the Code's attempt to extend social security to unorganised and gig workers marks a progressive shift in recognising the realities of contemporary labour markets. Given that a significant proportion of women are engaged in informal and precarious employment, such inclusion holds transformative potential. Yet, challenges relating to registration, awareness, and administrative capacity continue to limit the reach of these benefits. The framework for

¹² Code on Social Security, 2020 (India).

¹³ Vijay P Singh, “The Study of the Legal and Judicial Approach in India to the Problem of Gender Inequality in the Workplace” (2023) 65(3) International Journal of Law and Management 209.

gig and platform workers, while innovative, remains largely welfare-oriented and lacks enforceable rights, thereby leaving women in these sectors vulnerable to insecurity and exploitation. Consequently, the Code reflects an important transition from protective legislation towards a broader conception of social security, but it stops short of achieving substantive gender justice. The persistence of structural inequalities and implementation gaps underscores that legal reform, in isolation, cannot dismantle deeply entrenched socio-economic barriers.¹⁴

7.Challenges in Achieving Gender Justice

Despite significant legislative advancements, the realisation of gender justice within Indian labour law continues to be hindered by deep-rooted structural and socio-economic challenges. One of the most persistent issues is the overwhelming dominance of the informal sector, where a large proportion of women workers remain employed without formal contracts, social security, or legal protection. While the Code on Social Security, 2020 attempts to extend coverage to unorganised workers, the effectiveness of such provisions is limited by practical barriers such as lack of registration, inadequate awareness, and administrative inefficiencies. In many instances, women workers are either unaware of their entitlements or unable to navigate the procedural requirements necessary to access them, thereby reducing statutory protections to mere formal declarations rather than enforceable rights.

Another significant challenge lies in the persistence of the gender wage gap and occupational segregation, which continue to undermine the principle of equality in the workplace. Women are often concentrated in low-paying, insecure, and undervalued forms of labour, reflecting broader societal biases and economic structures. Even where laws mandate equal remuneration, enforcement remains weak, particularly in informal and gig-based employment. Furthermore, the rise of the gig economy, while offering flexibility, has introduced new forms of precarity, where women workers lack job security, social benefits, and effective grievance redressal mechanisms. The absence of clearly defined employer obligations within such frameworks raises serious concerns about accountability and the adequacy of existing legal protections.¹⁵

Equally critical is the gap between legislative intent and implementation, which continues to

¹⁴ Mansi Nagyan, "Gender Justice and Indian Labour" (2021) 4 International Journal of Management and Humanities 851.

¹⁵ "The Study of the Legal and Judicial Approach in India to the Problem of Gender Inequality in the Workplace"

undermine the transformative potential of labour reforms. Provisions relating to maternity benefits, creche facilities, and welfare schemes often suffer from inconsistent enforcement, insufficient infrastructure, and limited institutional capacity. This disconnect highlights a fundamental limitation of labour law, where the existence of rights does not guarantee their realisation. As has been aptly noted in legal scholarship, “the law may promise equality, but without effective enforcement, it risks institutionalising inequality in a more subtle form.”¹⁶ Consequently, achieving substantive gender justice requires not only progressive legislation but also robust implementation mechanisms, increased awareness, and a shift in societal attitudes that continue to shape women’s participation in the workforce.

8.Challenges in Achieving Gender Justice

Despite progressive reforms, several structural and legal challenges continue to impede the realisation of gender justice within Indian labour law, particularly under the Code on Social Security, 2020:

1. Dominance of Informal Sector

A significant proportion of women workers are engaged in informal employment, where legal protections and social security benefits are either absent or inaccessible. Although the Code attempts to include unorganised workers, practical barriers such as lack of registration and awareness limit its effectiveness.

2. Implementation and Administrative Gaps

There exists a persistent disconnect between legislative intent and ground-level enforcement. Weak institutional capacity, bureaucratic delays, and lack of monitoring mechanisms often prevent women from accessing statutory benefits.

3. Gender Wage Gap and Occupational Segregation

Despite legal guarantees of equal pay, women continue to be concentrated in low-paying and insecure jobs. Enforcement of wage equality remains weak, especially in informal and gig-based sectors.

¹⁶ “Gender Justice and Indian Labour”

4. Employer-Centric Burden of Maternity Benefits

The financial responsibility placed on employers for maternity benefits may discourage the hiring of women, thereby indirectly perpetuating workplace discrimination rather than eliminating it.

5. Limited Protection for Gig and Platform Workers

While the Code recognises gig workers, the framework remains largely welfare-oriented without enforceable rights or clear employer obligations, leaving women in such sectors vulnerable to exploitation and insecurity.

6. Lack of Awareness Among Women Workers

Many women, particularly in rural and informal sectors, are unaware of their legal rights and entitlements, which significantly reduces the practical impact of labour legislation.

9. Analysis

The evolution of Indian labour law from protective legislation to a more consolidated and ostensibly inclusive framework reflects a significant normative shift in the understanding of gender justice. At a conceptual level, this transition signals a movement away from viewing women as passive recipients of welfare towards recognising them as equal participants in the labour market. However, a closer examination reveals that this transformation remains incomplete and, at times, contradictory. While earlier protective laws were criticised for their paternalistic assumptions, contemporary reforms, including the Code on Social Security, 2020, often retain elements of the same framework under a restructured legislative form. The emphasis has shifted from overt restrictions to broader welfare inclusion, yet the underlying structural inequalities continue to persist.

A critical issue lies in the distinction between formal recognition and substantive realisation. The Social Security Code expands the scope of coverage to include unorganised and gig workers, thereby acknowledging the realities of modern labour markets. However, this inclusion is largely dependent on procedural mechanisms such as registration and administrative implementation, which disproportionately disadvantage women. In effect, the law creates a framework of entitlement without ensuring its accessibility. This reflects a recurring limitation within labour law, where progressive provisions coexist with systemic barriers, resulting in what may be described as “formal inclusion without functional

empowerment.”¹⁷

Furthermore, the persistence of employer-centric obligations, particularly in areas such as maternity benefits, illustrates how gender justice continues to be mediated through economic considerations. By placing the burden of compliance on individual employers, the law inadvertently creates disincentives for hiring women, thereby reinforcing the very inequalities it seeks to eliminate. Similarly, the absence of enforceable rights for gig and platform workers highlights the gap between recognition and protection, leaving a significant segment of women workers in precarious conditions. These issues underscore the fact that gender justice cannot be achieved solely through legislative reform; it requires a reconfiguration of institutional structures and accountability mechanisms.¹⁸

The broader implication of this analysis is that Indian labour law is currently situated in a transitional phase, where the language of equality has evolved, but its practical realisation remains constrained. The shift from protection to substantive equality is not merely a legislative process but a structural transformation that demands coordinated efforts across legal, economic, and social domains. As long as implementation gaps, socio-economic disparities, and gendered assumptions persist, the promise of substantive equality will remain only partially fulfilled. Thus, the current framework, while progressive in intent, reflects a hybrid model one that oscillates between protection and empowerment without fully achieving either.¹⁹

10. Conclusion

The trajectory of Indian labour law, when viewed through the lens of gender justice, reveals a gradual yet complex shift from protective paternalism to an aspirational framework of substantive equality. Early labour legislations, though well-intentioned, were rooted in assumptions of vulnerability that often restricted women’s participation in the workforce. Over time, constitutional jurisprudence and judicial interventions reoriented this approach towards recognising equality, dignity, and autonomy as central to women’s labour rights. This evolution is further reflected in contemporary reforms, particularly the Code on Social Security, 2020,

¹⁷ “The Study of the Legal and Judicial Approach in India to the Problem of Gender Inequality in the Workplace” (2023) 65(3) International Journal of Law and Management 209.

¹⁸ “Gender Justice and Indian Labour” (2021) 4 International Journal of Management and Humanities 851.

¹⁹ Analytical synthesis based on labour law reform and gender justice discourse.

which seeks to expand the scope of social protection and include previously excluded categories of workers.²⁰

However, as this study demonstrates, the movement towards substantive equality remains partial and uneven. While the legislative framework has expanded in scope and intent, significant gaps persist in its implementation and accessibility. The continued dominance of informal employment, the persistence of gender wage disparities, and the limited enforceability of rights for gig and platform workers highlight the structural barriers that law alone cannot dismantle. In many instances, the promise of equality remains contingent upon factors such as awareness, administrative capacity, and socio-economic conditions, thereby limiting the transformative potential of legal reforms. The analysis underscores a critical insight: gender justice cannot be achieved solely through the expansion of legal provisions; it requires a fundamental shift in how labour, equality, and social protection are conceptualised and operationalised. As long as legal frameworks continue to operate within structures that implicitly accommodate inequality, the transition from protection to empowerment will remain incomplete. In this sense, the current labour law regime reflects not a culmination but a continuum, where the ideals of substantive equality are still in the process of being realised.

Ultimately, the Code on Social Security, 2020 represents an important step forward, but it is not the final answer to the question of gender justice in labour law. The challenge lies in bridging the gap between legislative intent and lived reality, ensuring that rights are not merely recognised but effectively realised. Only through a combination of robust implementation, institutional accountability, and societal transformation can the vision of substantive gender equality in the workplace move from aspiration to actuality.

²⁰ Code on Social Security, 2020 (India).