

# Special Provisions under Labour Law in India Safeguarding the Rights of Women

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## Abstract

This paper examines the special provisions within Indian Labour Law designed to safeguard the rights of women in the workforce. It analyzes the constitutional principles underpinning these provisions and delves into key legislative frameworks such as the Equal Remuneration Act, the Maternity Benefit Act, and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, highlighting their objectives and significant amendments. The paper also discusses the integration of these laws into the recent Labour Codes and assesses the challenges in their effective implementation and enforcement across various sectors, including the unorganized sector. Furthermore, it evaluates the effectiveness and impact of these legal safeguards in promoting gender equality in employment, comparing them with international standards and conventions ratified by India. The abstract concludes by outlining the persistent gaps and suggesting potential ways forward to strengthen the legal framework and achieve substantive gender equality in the Indian workplace.

**Keywords:** Labour Law, Gender Equality, Employment, Rights of Women

## I. Introduction

The increasing participation of women in India's workforce represents a significant transformation with profound implications for the nation's economic and social development. Over the decades, the role of women has evolved from predominantly domestic spheres to integral positions across various professional environments. This evolution, however, has not been without its complexities, as women often encounter unique challenges stemming from societal norms, biological factors, and historical gender disparities. Recognizing these specific hurdles, Indian lawmakers have enacted a series of labour laws containing special provisions designed to safeguard the rights of women and foster a more inclusive and equitable workplace. These legal safeguards address critical issues such as workplace harassment, maternity benefits, and pay equity, underscoring India's commitment to advancing gender equality and ensuring the full participation of women in the workforce. Beyond legal mandates, companies are also increasingly adopting progressive policies, such as paid menstrual leave, to further support their female employees' well-being. This paper aims to examine the key special provisions under Indian Labour Law aimed at protecting women's rights, analyze their effectiveness in achieving their objectives, and discuss the persistent challenges and potential future directions for strengthening these safeguards.

## II. Constitutional and Foundational Principles

The Constitution of India serves as the supreme law of the land and provides the bedrock for all legislation concerning gender equality and labour rights. Several fundamental rights and directive principles enshrined in the Constitution lay the groundwork for the special provisions under labour law for women. Article 14 guarantees equality before the law, implying that all citizens, regardless of gender, should be treated equally in the eyes of the law and have equal protection under it. Article 15 takes this further by explicitly prohibiting discrimination on grounds of religion, race, caste, sex, or place of birth. Importantly, Article 15(3) includes an enabling clause that permits the State to make any special provision for women and children. This clause recognizes the historical and societal disadvantages faced by women and allows for affirmative action to address these inequalities. Article 16 ensures equality of opportunity in matters of public employment, preventing discrimination in hiring and promotion within government sectors.

The Directive Principles of State Policy, although not directly enforceable by courts, are fundamental in the governance of the country and guide the State in formulating laws. Article 39 is particularly relevant, directing the State to secure, among other things, that men and women equally have the right to an adequate means of livelihood, that there is equal pay for equal work for both men and women, and that the health and strength of workers, men, women, and children are not abused. Furthermore, Article 42 mandates the State to make provision for securing just and humane conditions of work and for maternity relief. Finally, Article 51A(e) lays down the fundamental duty of every citizen to renounce practices derogatory to the dignity of women. These constitutional provisions collectively provide the fundamental justification and framework for the special labour laws enacted to protect and promote the rights of women in the Indian workforce. The enabling provision in Article 15(3) is particularly significant as it explicitly allows for the creation of specific laws and provisions tailored to address the unique needs and challenges faced by women in the workplace.

## III. Key Legislative Frameworks Safeguarding Women's Rights

Several key legislative acts have been enacted in India to translate the constitutional principles of gender equality into tangible rights and protections for women in the workplace.

- **A. The Equal Remuneration Act, 1976 (and its integration into the Code on Wages, 2019)**

The Equal Remuneration Act, 1976, was a landmark legislation aimed at eliminating gender-based wage discrimination and ensuring that men and women receive equal pay for performing the same work or work of a similar nature. This Act sought to address the historical disparities in wages where women were often paid less than men for doing comparable work. Key provisions of the Act included the mandate for equal remuneration for men and women workers for the same work or work of a similar nature (Section 4), and the prohibition of discrimination against women in recruitment and conditions of service, including promotions, training, and transfers (Section 5). Section 3 of the Act gave it an overriding effect over any other law or contract that was inconsistent with its provisions. Employers were also required to maintain registers

containing details of the remuneration paid to both male and female workers (Section 8) , and penalties were prescribed for any contravention of the Act's provisions (Section 10).

In a significant development, the Equal Remuneration Act, 1976, has been subsumed under the Code on Wages, 2019. The Code on Wages, which consolidates four central labour laws related to wages and bonus, retains the fundamental principle of equal pay for equal work irrespective of gender (Section 3). This integration aims to broaden the scope and application of the principle beyond the traditional male-female binary, potentially extending its benefits to the LGBTQI+ community as well. The Code also prohibits discrimination on the ground of sex in matters relating to wages and recruitment for the same work or work of similar nature. While the core objective remains the same, the consolidation under the Code on Wages signifies an effort to streamline and potentially enhance the enforcement of wage equality provisions across all sectors.

- **B. The Maternity Benefit Act, 1961 (as amended in 2017)**

The Maternity Benefit Act, 1961, is a crucial piece of legislation that aims to protect the employment of women during and after pregnancy and to ensure their health and financial security during this critical period. Recognizing the biological and societal roles of women as mothers, this Act provides a range of benefits to support them through pregnancy, childbirth, and early childcare. The Act was significantly amended in 2017 to enhance these benefits and align them with evolving societal needs and international standards.

Key provisions of the Maternity Benefit Act, 1961 (as amended in 2017), include the extension of paid maternity leave to 26 weeks for women with less than two surviving children. Women with two or more surviving children are entitled to 12 weeks of leave. The Act also provides 12 weeks of maternity leave for adoptive mothers and commissioning mothers. In case of a miscarriage or medical termination of pregnancy, women are entitled to six weeks of leave. A significant provision introduced by the amendment is the mandatory requirement for establishments with 50 or more employees to provide a crèche facility, either within the workplace or at a nearby location. The Act also ensures that women are entitled to two nursing breaks during their daily work schedule until the child reaches fifteen months of age. Furthermore, the law protects women against dismissal or any disadvantageous changes in their service conditions during their maternity leave. Finally, the amendment introduced an option for women to work from home after availing maternity leave, subject to mutual agreement with the employer. These comprehensive provisions underscore the importance of supporting working mothers and ensuring their seamless reintegration into the workforce.

- **C. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act)**

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, commonly known as the POSH Act, is a landmark legislation enacted to address the pervasive issue of sexual harassment against women in the workplace and to ensure a safe,

secure, and respectful working environment for them. The Act was a response to the long-felt need for a specific legal framework to deal with this issue, following the Supreme Court's Vishaka guidelines of 1997.

The POSH Act defines sexual harassment broadly to include any unwelcome acts or behavior of a sexual nature, whether direct or implied. This encompasses physical contact and advances, a demand or request for sexual favours, making sexually coloured remarks, showing pornography, or any other unwelcome physical, verbal, or non-verbal conduct of a sexual nature. A key mandate of the Act is the requirement for every employer to constitute an Internal Complaints Committee (ICC) at each office or branch of an organization employing ten or more employees. The Act lays down a detailed procedure for filing complaints, conducting inquiries, and providing a fair opportunity to all parties involved. Employers have significant responsibilities under the Act, including implementing an anti-sexual harassment policy, conducting regular training and awareness programs to sensitize employees, and assisting the complainant if she wishes to file a complaint with the police. Non-compliance with the provisions of the Act can lead to penalties, including fines and even cancellation of business licenses in cases of repeated violations. The POSH Act has been a crucial step in recognizing and addressing workplace sexual harassment as a violation of women's fundamental rights to equality and dignity.

- **D. The Factories Act, 1948 and other Welfare Legislations**

The Factories Act, 1948, incorporates several provisions aimed at ensuring the welfare, health, and safety of workers, with specific attention to the needs of women workers. These provisions include the establishment of canteens, restrooms, first aid boxes, facilities for sitting, washing, storing, and drying clothes, and crèches for women workers within the factory premises. The Act also includes restrictions on the employment of women in certain hazardous processes and during night shifts. While initially intended to protect women from potentially dangerous work environments and maintain work-life balance, these restrictions have sometimes been criticized for limiting their employment opportunities. The Act also prohibits women from being required or allowed to work in any factory except between the hours of 6 a.m. and 7 p.m., although state governments have the power to make rules providing for exemptions under certain conditions. Additionally, the Act prohibits women from cleaning, lubricating, or adjusting machinery while it is in motion and from working in certain parts of factories dealing with cotton pressing. Furthermore, the Act mandates the provision of separate latrines and washing facilities for female workers to ensure their hygiene and privacy.

Beyond the Factories Act, other welfare legislations also contain specific provisions for women workers. The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, mandates comprehensive welfare measures for women construction workers, including first aid, separate toilets, canteens, crèches, and restrooms. The Beedi and Cigar Workers (Conditions of Employment) Act, 1966, requires industrial premises employing a specified number of female workers to provide suitable rooms for the use of their children. Even the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA)

includes a welfare provision for children accompanying women workers at work sites. These diverse legislations reflect a broad commitment to addressing the specific needs and challenges faced by women across various sectors of employment.

#### **IV. Recent Labour Codes and Women's Rights**

The recent enactment of four new Labour Codes aims to consolidate and simplify the existing complex web of labour laws in India. These codes, namely the Code on Wages, 2019, the Code on Social Security, 2020, the Occupational Safety, Health and Working Conditions Code, 2020, and the Industrial Relations Code, have significant implications for the safeguards available to women workers.

The Code on Wages, 2019, as discussed earlier, subsumes the Equal Remuneration Act, 1976, and continues to uphold the principle of equal pay for equal work without discrimination on the ground of gender. It broadens the definition of wages and aims to ensure fairer and more transparent wage practices.

The Code on Social Security, 2020, consolidates laws related to social security benefits, including those previously covered under the Maternity Benefit Act, 1961, and the Employees' State Insurance Act, 1948. It retains the provisions for enhanced paid maternity leave of 26 weeks and mandates crèche facilities in establishments with 50 or more employees. The Code also includes provisions for health and maternity benefits for women workers in the unorganized sector, a significant step towards greater inclusivity.

The Occupational Safety, Health and Working Conditions Code, 2020, consolidates laws related to workplace safety and health, including the Factories Act, 1948, and the Mines Act, 1952. This Code allows women to be employed in all establishments for all types of work, including night shifts (before 6 a.m. and beyond 7 p.m.), with their consent, subject to conditions relating to safety, holidays, and working hours. It also empowers the appropriate government to issue notifications prohibiting or restricting the employment of women in dangerous operations if deemed necessary for their health and safety.

The Industrial Relations Code consolidates laws related to trade unions, conditions of employment, and industrial disputes. While it does not contain specific special provisions for women, its impact on collective bargaining rights and grievance redressal mechanisms could indirectly affect women workers.

While these new codes aim to streamline and modernize labour laws, concerns have been raised about whether they adequately address the specific needs and challenges faced by women workers. Some argue that a strong gender lens is still lacking in certain aspects of these codes.

#### **V. Challenges in Implementation and Enforcement**

Despite the existence of a comprehensive legal framework, several practical hurdles and societal factors hinder the effective implementation and enforcement of special provisions for women in India. A



significant challenge is the lack of awareness among many women workers about their legal rights and the available redressal mechanisms. Deep-rooted social and cultural barriers, including traditional gender roles and biases, often influence hiring practices, promotions, and workplace behavior, undermining the intent of these laws. Gender stereotypes also contribute to occupational segregation, with women often concentrated in lower-paying jobs, and to persistent wage gaps despite the principle of equal pay for equal work.

Underreporting of sexual harassment remains a major concern, often due to fear of stigma, retaliation, or a lack of faith in the redressal process. The constitution and effective functioning of Internal Complaints Committees (ICCs) under the POSH Act also face challenges, particularly in smaller organizations and the unorganized sector, where awareness and resources may be limited. Compliance with provisions like mandatory crèche facilities can be difficult for small and medium enterprises due to financial constraints and logistical challenges. A significant portion of women in India work in the unorganized sector, where labour laws often have limited reach and enforcement, leaving them vulnerable to exploitation and without access to many of these safeguards. Finally, there are broader issues of enforcement and a lack of effective monitoring mechanisms across various labour laws, which can hinder their impact on the ground.

## **VI. Effectiveness and Impact**

The special provisions under Labour Law in India have undoubtedly made a positive impact in safeguarding women's rights in the workplace. The POSH Act, for instance, has increased awareness about sexual harassment and established redressal mechanisms in many organizations. The Maternity Benefit Act, as amended, provides significantly improved maternity benefits, aligning India with some of the most progressive standards globally. Landmark judgments, such as those related to equal pay for temporary workers, the extension of maternity benefits to casual workers, and the broad interpretation of sexual harassment, have further strengthened the legal protections available to women.

Despite this progress, persistent challenges indicate that these provisions alone are not sufficient to achieve substantive gender equality in employment. The gender wage gap remains significant, women continue to be underrepresented in leadership roles, safety concerns persist in certain sectors and during night shifts, and many women struggle to balance work and family responsibilities, often leading to a drop in workforce participation after maternity. The effectiveness of these laws is also hampered by the challenges in implementation and enforcement discussed earlier, particularly in the vast unorganized sector.

## **VII. Comparison with International Standards**

India has ratified several key international conventions related to women's labour rights, demonstrating its commitment to global standards. These include ILO Convention No. 100 on Equal Remuneration, which mandates equal pay for equal work, and ILO Convention No. 111 on Discrimination (Employment and Occupation), which prohibits discrimination based on sex. India has also ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which provides a comprehensive framework for achieving gender equality. However, India has not ratified ILO

Convention No. 183 on Maternity Protection, which sets international standards for maternity leave duration and related benefits.

Comparing Indian laws with international benchmarks reveals areas of alignment and divergence. India's maternity leave duration of 26 weeks for the first two children is more generous than the 14 weeks recommended by ILO Convention No. 183 and surpasses the provisions in many other countries, including the USA. However, the absence of comprehensive parental leave provisions in India stands in contrast to the practices in many developed nations, such as Sweden, where significant paid parental leave is available to both mothers and fathers. The definition of sexual harassment under the POSH Act is broadly aligned with international understandings, but challenges in implementation remain a global issue. Restrictions on night work for women, while gradually being relaxed in India, are increasingly viewed internationally as discriminatory and limiting women's employment opportunities, unless accompanied by robust safety measures.

Act	Key Provisions	Applicability
Equal Remuneration Act, 1976	Equal pay for same or similar work; Prohibition of discrimination in recruitment and conditions of service.	Public and private sectors; all establishments employing men and women for the same or similar work.
Maternity Benefit Act, 1961 (amended)	26 weeks paid leave (first two children); 12 weeks for subsequent children, adoptive, and commissioning mothers; Leave for miscarriage; Mandatory crèche (50+ employees); Nursing breaks; Protection against dismissal; Option for work from home.	Establishments employing 10 or more employees in factories, mines, plantations, shops, and other establishments.
POSH Act, 2013	Definition of sexual harassment; Mandatory Internal Complaints Committee (10+ employees); Procedure for complaint and inquiry; Employer responsibilities for prevention and redressal; Penalties for non-compliance.	Both organized and unorganized sectors; all workplaces including public and private sectors, hospitals, educational institutions, transportation provided by employer, etc.
Factories Act, 1948	Welfare facilities (canteen, restrooms, crèches); Health and safety measures; Restrictions on night work and hazardous tasks for women; Provision of separate facilities (latrines, washing).	Factories employing 10 or more workers with power or 20 or more workers without power.
Code on Wages, 2019	Continues equal pay for equal work principle; Prohibits discrimination in wages and recruitment based on gender.	Applicable to all employees in organized and unorganized sectors.
Code on Social Security, 2020	Provisions for maternity benefits (similar to MB Act); Mandatory crèche (50+	Applicable to establishments subject to minimum employee thresholds; aims to

	employees); Health and maternity benefits for unorganized sector women.	cover organized, unorganized, and gig workers.
OSH Code, 2020	Allows women to work in all establishments and night shifts with consent and safety measures; Empowers government to restrict women in dangerous operations.	Establishments employing at least 10 workers; all mines, docks, and establishments carrying out hazardous or life-threatening activities.

## VIII. Conclusion and Way Forward

The special provisions under Labour Law in India represent a significant effort to safeguard the rights of women in the workforce, reflecting the constitutional commitment to gender equality. The existing legal framework, comprising key acts like the Equal Remuneration Act (now under the Code on Wages), the Maternity Benefit Act, and the POSH Act, along with welfare provisions in the Factories Act and other legislations, has undoubtedly contributed to increased awareness, improved benefits, and the establishment of redressal mechanisms for women workers.

However, the journey towards achieving substantive gender equality in employment in India is far from over. Persistent challenges such as the gender wage gap, underrepresentation in leadership, safety concerns, and work-life balance issues continue to hinder women's full and equitable participation. The effective implementation and enforcement of these laws remain critical areas needing attention, particularly in the vast and diverse unorganized sector.

To further strengthen the legal framework and its impact, several recommendations can be considered. There is a need to ensure a stronger gender lens in the ongoing implementation of the new Labour Codes, addressing any potential dilutions of existing safeguards. Improving enforcement mechanisms through stricter monitoring, increased inspections, and effective penalties for non-compliance is crucial. Enhancing awareness and sensitization programs targeting both employers and employees about their rights and responsibilities under these laws is essential to foster a culture of respect and equality. Promoting gender-responsive policy design that takes into account the intersectional challenges faced by women from different backgrounds is also vital. Furthermore, considering the introduction of comprehensive and adequately paid parental leave provisions could help in more equitably distributing caregiving responsibilities. Finally, strengthening support systems for working mothers, including ensuring access to affordable and quality childcare facilities, would significantly ease the burden on women and enable their continued participation and progression in the workforce.

Achieving truly equitable and empowering workplaces for women in India requires a multi-faceted approach that goes beyond legal reforms. It necessitates societal changes in attitudes and norms, a strong commitment from employers to create inclusive cultures, and the active participation of women themselves in advocating for their rights. By addressing the existing gaps and challenges with concerted efforts, India can move closer to realizing the constitutional vision of gender equality in all spheres of life and work.



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