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This journal is an initiative by Legal Education and Awareness Foundation, a registered Non-Governmental Organization, which aims at providing legal education and awareness to all parts of the country beyond any social and economic barriers.

We, at Jurisperitus believe in the principles of justice, morality and equity for all. We hope to re-ignite those smoldering embers of passion that lie buried inside us, waiting for that elusive spark.

With this thought, we hereby present to you

Jurisperitus: The Law Journal.

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LEGAL IMPLICATIONS OF CROSS BORDER E-COMMERCE CONTRACTS IN INDIA

- MADHAVI GIRISH VAIDYA-ATHAVALÉ¹

ABSTRACT

The Indian E-commerce request in passing a significant increase in the growth that's primarily driven by increased in internet vacuity and a swell in cross-border e-commerce deals. With the rise of transnational ecommerce agreements, this growth presents both openings and legal challenges. These challenges affect drafting and administering cross-border e-commerce contracts. Cross-border e-commerce is about buying and dealing products and services between two persons or businesses or with a stoner or businessman. Either party should have different authorities. In the current script, the overseas border issues have been raised to the coming position to track it. In the cross-border e-commerce platform, the merchandisers get connected to the transnational request to contend with the original retailers. Cross-border e-commerce adds new options to the original druggies to attract domestic requests. To deal with the transnational merchandisers and get a hand in the Indian request, the retailers need specific rules and regulations. E-commerce is under the Consumer Protection(e-commerce) rules, 2020 and other laws related to data protection, foreign, duty arrears, and numerous further to consider the matter directly. Transnational e-commerce agreements are decreasingly current as foreign companies tap into the Indian request. still, these deals bear scrupulous attention to legal fabrics governing similar contracts. In this composition we're going to study legal counter accusations, legal frame, challenges of Cross Border E-commerce Contracts in India².

Key words: E-commerce, cross-border contracts, international merchandisers, domestic request.

A.) INTRODUCTION:

E-commerce platforms are more trending in the tech- smart world, and smartphones and web

¹ Advocate

² <https://lawcrust.com/e-contracts-formation-issues/#:~:text=an%20e-contract>

services are flourishing in the request in a more significant manner. E-commerce is dealt more in the online platform and deals with the client directly, just a click down. The platform captures both the public and transnational requests in an easy go. The uniformity in the laws makes it crystal clear that the Consumer- to- Business relationship is healthy and good to establish the International and domestic requests fabulously. The Rules for all thee-commerce platforms set up in India are obligatory to follow and maintain the process as per the guidelines.

B.) ELABORATION OF CROSS BORDERE-CONTRACTS IN INDIA:

The elaboration of electronic contracts marks a vital shift in geography of marketable deals, reflecting broader trends in digital metamorphosis and globalization. Electronic contracts are an essential aspect of Ecommerce. The conception of electronic contracts surfaced in the late 20th century, alongside with the growth of internet and digital communication technologies. originally the legal frame regarding electronic contracts faced difficulties due to enterprises over security, authenticity and enforceability. still, the convenience, speed and cost- effectiveness of electronic deals gradationally overbalanced these enterprises, leading to revaluation of legal norms and practices to accommodate electronic contracts. One of the foremost corners in the formal recognition of electronic contracts was the UNCITRAL Model Law on Electronic Commerce (1996), which handed the foundation for legal frame. This model law played a pivotal part in encouraging countries to acclimatize their legal systems to fete e-contracts as fairly binding. Following this the United Nations Convention on the Use of Electronic Dispatches in the transnational Contracts (2005) further solidify the legal status of electronic contracts in the transnational trade, addressing specific issues related to cross-border electronic deals. contemporaneously, technological advancements similar as encryption technologies, digital hand and secure Page 1 of 3 electronic sale protocols enhanced the security and trustability of electronic contracts. These technologies addressed the original enterprises about the integrity authenticity of electronic agreements, making them decreasingly able to their paper- grounded counterparts in the terms of legal robustness. The elaboration of electronic contracts reflects a broader trend of digitization of commerce and law. From original legal challenges to the relinquishment of sophisticated technologies like block- chain and smart contracts.

C.) ABSTRACT UNDERSTANDING OF “FOREIGN COURTS”, “FOREIGN

JUDGMENTS” & “FOREIGN DECREE”:

A " Foreign Court" refers to a court located outside India which is not established by the Indian government. A " Foreign Judgment" is a judgment issued by such a court and a " Foreign Decree" ³involves a financial judgment but excludes penalties or arbitral awards. To apply a foreign judgment or decree in India, it must pass the test of persuasiveness which excludes judgments if they aren't from a competent court, not grounded on case graces, violate transnational law, breach Indian law or involve fraud. A decree from a foreign court in a " repaying home" can be executed as an Indian court decree. The party must file a prosecution operation with a certified dupe of the decree in an Indian quarter court which will apply it without re-examining the case's graces. In non-reciprocating home judgments, the party must file a suit in an Indian court that will lead to are-litigation of the case. This will make the process longer and more precious. The timeframe to file such a suit is three times from the foreign decree's date. pitfalls include delayed prosecution and fresh costs. Section 2(5) and 2(6) of the Civil Procedure Code, 1908(CPC)⁴ defines foreign courts and judgments. It means a foreign court means a court positioned outside India and not established or continued by the authority of central government. Further, it defines foreign judgement means the judgement of a foreign court.

D.) LEGAL FRAMEWORK GOVERNING CROSS BORDER E-CONTRACTS:

Legal considerations fore-commerce contracts in India similar as governance, consumer protection, and enforceability are the main end of business strategies. E-commerce contracts in India are fairly honoured under the Information Technology Act, 2000. E-commerce contracts in India must cleave to the vittles' of the Indian Contract Act, 1872 Cross-border e-commerce contracts are defined as legal connections between merchandisers and buyers located in different countries. These contracts regulate issues similar as payment terms, product delivery, returns, and sequestration. Drafting enforceable cross-border e-commerce contracts involves navigating the legal systems of both authorities and complying with regulations like India's Foreign Exchange Management Act (FEMA) and Information Technology Act, 2000. E-commerce

³ <https://www.vinculumgroup.com/e-commerce-across-borders-the-law-supports-both-brands-and-operators/>

⁴ Civil Procedure Code, 1908

attorneys in India play a vital part in icing that these agreements are fairly binding across multiple authorities. The enforceability of-commerce contracts in India depends on collective concurrence and legal consideration The Information Technology Act, 2000 legislated with the ideal of addressing the unattended section ofcommerce and electronic agreements and furnishing legal recognition to contracts executed electronically. The Act doesn't explicitly apply electronic contracts but Section 10A of the IT Act, 2000 confers a degree of validity upon prosecution of contracts electronically. This section was introduced by the correction of 2008. It enumerates electronic proffers of a contract to electronically accept the contract and enlists cancellation of the contract through electronic medium. The section in itself says that the bare performance of a contract electronically or the contract being in digital form wo does not abate the contract. But in substance, it also highlights that an electronic contract must fulfil the valid conditions of being a contract, irrespective of its nature. The Information Technology Act 2000 remains the soul of electronic contracts, but the tone and language of the contract are told by the Indian Contract Act, 1872. Section 81 of the IT Act 2000⁵ countries that' the Act shall have overridden effect' which means the vittles' of the IT Act shall have effect until they're inconsistent with any vittles' of other laws in force. The Indian Contract Act applies to all contracts, and they aren't inconsistent with the vittles' of the IT Act, which governs the status of electronic contracts in India unless the rudiments of a valid contract are met. The Indian Contract Act doesn't condense the prosecution of e-contracts over electronic platforms; therefore, to accompany the legitimacy of e-contracts the correction of 2008 was made in the IT Act.

International Legal Framework:

The most extensively legislated textbook is the UNCITRAL Model Law on Electronic Commerce(1996), which establishes rules for the equal treatment of electronic and paper-grounded information, as well as the legal recognition of electronic deals and processes, grounded on the abecedarian principles onionPage 2 of 3 discrimination against the use of electronic means, functional parity and technology impartiality. The UNCITRAL Model Law on Electronic Autographs (2001) provides fresh rules on the use of electronic autographs. The United Nations Convention on the Use of Electronic Dispatches in International Contracts (New

⁵ Information Technology Act, 2000

York, 2005) builds on pre-existing UNCITRAL textbooks to offer the first convention that provides legal certainty for electronic contracting in transnational trade. The UNCITRAL Model Law on Electronic Transferable Records (2017) applies the same principles to enable and grease the use in electronic form of transmittable documents and instruments, similar as bills of lading, bills of exchange, cheques, promissory notes and storehouse bills. In keeping with its central and coordinating part within the United Nations system in addressing legal issues related to the digital frugality, UNCITRAL continues its efforts to fairly enable arising technologies and their trade operations, including in connection with other areas of work similar as disagreement resolution, security interests, bankruptcy and the transnational transport of goods. In 2022, UNCITRAL approved the publication of a taxonomy of legal issues related to the digital frugality, which records exploratory work by the UNCITRAL secretariat on the motifs of artificial intelligence, data, online platforms, digital means, and decentralized systems, and which is intended to guide proffers for unborn legislative work on electronic commerce (digital trade) and in other areas of work⁶.

E.) CHALLENGES IN CROSS-BORDER E-CONTRACTS:

Cross-border contracts face multitudinous challenges that stem from the complexity of International legal terrain, technological difference and practical considerations. One of the primary legal challenges is the lack of uniformity in laws governing electronic contracts across governance. Different countries have varied approaches to electronic autographs, contract conformation and enforceability of electronic contracts agreements, creating query and implicit legal pitfalls for parties in transnational deals. This difference necessitates navigating a complex web of public laws, which will be particularly dispiriting for small and medium-sized enterprises that warrant the coffers for expansive legal consultations. Legal Jurisdictional and applicable law Challenges The legal frame for e-commerce contracts in India is evolving with technological advancements. The e-commerce platforms aren't limited by any governance and have the capability to perform across borders to fulfil certain scores. therefore, the contract must be well equipped with proper cross – border jurisdictional laws so that it complements the

⁶ <https://www.mondaq.com/india/consumer-trading-unfair-trading/1557246/legal-implications-of-cross-border-e-commerce-contracts-in-india>

contract and helps to reduce any unborn controversies with respect to governance.

The jurisdictional challenge is mentioned in the case of *Satyam Computer Services Ltd. v/ s Unpaid Systems Ltd* (2008). In this case, Satyam and Unpaid entered into multiple contracts with different objects but due to scarcities and indecorous drafting of contracts. The mismanagement redounded in formal accommodations that ended up as action before a marketable court Both of the IT enterprises ultimately executed a Memorandum of Understanding (MoU) to resolve any controversies that may arise in the future. still, due to a lack of clarity in the clauses of the agreement, the matter ended up as a disagreement before the Commercial Court of England and Wales. As per the clauses of the agreement, all unborn controversies were subordinated to the English Court. still, Unpaid performed beyond its jurisdictional limit. The court mentioned that there's nebulosity in the clauses of the agreement. Security and Authentication icing the security and authenticity of the contract is consummate. vindicating the identity of the parties involved in thee-contracts can be delicate. Secure system of authentication is essential to help fraud and ensure that the person entering into the agreement is licit. The security of electronic data is major issue. icing that the data remains unaltered and defended from unauthorized access is critical for integrity of an-contract. Specialized Glitches Specialized issues, similar as garçon malfunctions or connectivity problems, can disrupt the conformation or prosecution of e-contracts. similar glitches may lead to controversies regarding the terms and conditions of the agreement. rearmost case law A significant case that set a Page 3 of 3 precedent for **e-contracts** in India is **Trimex International FZE Ltd. v. Vedanta Aluminium Ltd. (2010)**⁷.

In this case, the **Supreme Court of India** upheld the validity of an **e-contract**, emphasising that electronic agreements, including those made through emails and digital communications, are legally binding when they meet the essential contract elements.

Another case, **Shree Dipchand Garware (deceased) vs. Purshotam Ramchand Ganpatrao & Ors (2019)**, highlighted the growing acceptance of **e-contracts** in Indian courts, where an agreement formed through email exchanges was upheld.

Best Practices for Secure E-Contracts:

⁷ <https://journalijcar.org/sites/default/files/issue-files/14390F.pdf>

To ensure the formation of secure and legally enforceable **e-contracts**, follow these best practices:

Outline Clear Terms: Clearly define the rights, duties, and obligations of all parties involved.

Use Secure Digital Signature Solutions: Utilise secure and reliable digital signature platforms to ensure the authenticity of the contract.

Maintain Records: Keep a secure electronic record of all communications and documents exchanged during the contract's formation.

F.) CONCLUSION:

The Indian e-commerce market is increasing day by day. It is driven by cross-border transactions and international e-commerce agreements. However, businesses must navigate a complex legal landscape to succeed in this area. E-commerce contracts in India require careful attention to jurisdiction, consumer protection and balance within both domestic and foreign laws. To avoid issues in the formation of **e-contracts**, businesses and individuals should focus on compliance with the **IT Act** and ensure that the essential elements of a contract are met. Using secure digital signatures and ensuring clear terms and conditions are crucial. Moreover, including dispute resolution clauses in the agreement can mitigate potential conflicts.

G.) REFERENCES:

- Information Technology Act, 2000.
- Civil Procedure Code, 1908
- <https://lawcrust.com/e-contracts-formation-issues/#:~:text=an%20e-contract>
- <https://www.vinculumgroup.com/e-commerce-across-borders-the-law-supports-both-brands-and-operators/>
- <https://journalijcar.org/sites/default/files/issue-files/14390F.pdf>
- <https://www.mondaq.com/india/consumer-trading-unfair-trading/1557246/legal-implications-of-cross-border-e-commerce-contracts-in-india>

A COMPARATIVE STUDY ON LABOUR LAWS IN VARIOUS COUNTRIES

- APURVA D⁸

Abstract

Labour laws serve as a fundamental pillar in ensuring fair employment practices, protecting workers' rights, and promoting safe working conditions across nations. While India has a well-defined legal framework governing labour relations, its regulations exhibit notable differences when compared to those of other major economies. This research paper undertakes a comparative analysis of labour laws in India those in the United States (USA), the United Kingdom (UK), China, and Japan, focusing on key aspects such as minimum wage policies, working hours, occupational safety, social security, and dispute resolution mechanisms. By examining these variations, the study highlights the strengths and limitations of India's labour laws in the context of global standards. Additionally, it explores the socio-economic and cultural factors influencing these legal frameworks. The aim is to contribute to the discourse on labour reforms, suggesting potential pathways for India to align its policies with international best practices while addressing domestic workforce challenges.

Key words: Labour law, Employment regulations, Workplace safety, Labour protection, Industrial relations, Legal frameworks

1. Introduction

Labour laws form the backbone of equitable and sustainable employment systems, ensuring the protection of workers' rights, fair wages, and safe working conditions across the globe. In an increasingly interconnected world, comparative studies of labour regulations provide valuable insights into how different nations balance economic growth with social welfare. India, with its vast and diverse workforce, has a complex framework of labour laws shaped by historical, economic, and socio-political factors. However, these laws often face criticism for being rigid, outdated, or inadequately enforced, raising questions about their effectiveness in a modern,

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globalized economy.

This paper seeks to analyze and compare India's labour laws with those of four major economies the United States (USA), the United Kingdom (UK), China, and Japan each representing distinct approaches to labour regulation. The USA and UK follow liberal market-driven models with an emphasis on contractual freedom, while China and Japan blend state intervention with corporate-driven policies. By examining key dimensions such as employment contracts, minimum wage structures, working hours, occupational safety standards, social security provisions, and dispute resolution mechanisms, this study aims to identify gaps, strengths, and areas for potential reform in India's labour legislation. The significance of this research lies in its potential to inform policymakers, employers, and labour advocates about aligning India's labour laws with international standards while addressing local workforce challenges. Furthermore, it contributes to the broader discourse on how labour regulations evolve in response to economic transitions, technological advancements, and global labour trends. Through this comparative lens, the paper underscores the need for a balanced legal framework that fosters both worker protection and economic competitiveness.

2.Labour law in india

India's labor regulatory framework comprises multiple legislative enactments designed to safeguard worker rights, occupational safety, and employee welfare. Key statutes include the Industrial Disputes Act (1947), Factories Act (1948), Minimum Wages Act (1948), Employees' State Insurance Act (1948), and Payment of Bonus Act (1965), which collectively establish provisions for minimum wage guarantees, social security benefits, and healthcare protections. The Industrial Disputes Act serves as a cornerstone of Indian labor legislation, governing employer-employee relations and establishing formal dispute resolution processes. While this act recognizes trade union formation and acknowledges the right to strike, it simultaneously imposes procedural requirements and limitations on industrial actions. Complementing this framework, the Factories Act establishes comprehensive workplace safety standards and operational guidelines for manufacturing establishments. This legislation mandates specific safety protocols and authorizes factory inspectors to monitor compliance with statutory requirements, thereby ensuring adherence to prescribed working conditions and safety norms. This regulatory structure

reflects India's commitment to balancing worker protections with industrial productivity, though its implementation and effectiveness remain subjects of ongoing policy discussions.

3.Labour law in USA

The U.S. labor regulatory framework comprises several key statutes designed to safeguard workers' rights and welfare. Foundational laws include the National Labor Relations Act (1935), which governs employer-employee relations, establishes dispute resolution processes, and protects unionization rights while regulating strike procedures. The Fair Labor Standards Act (1938) sets minimum wage and overtime pay standards while addressing working conditions. Additional protections come from the Occupational Safety and Health Act, ensuring workplace safety, and the Employee Retirement Income Security Act governing benefit plans. Together, these laws create a comprehensive system addressing wages, collective bargaining, workplace safety, and retirement security for American workers.

4.Labour law in UK

The UK's labour regulatory framework is governed by several key statutes designed to protect workers' rights and welfare. Principal among these are the Employment Rights Act (1996), the Health and Safety at Work Act (1974), the National Minimum Wage Act (1998), and the Trade Union and Labour Relations (Consolidation) Act (1992). These laws collectively establish fundamental protections including fair wages, workplace safety standards, and social security benefits. The Employment Rights Act serves as a cornerstone of UK labour law, governing employer-employee relationships and establishing formal procedures for dispute resolution. While this legislation safeguards workers' rights to unionize and strike, it simultaneously imposes specific procedural requirements and limitations on industrial action. The framework ensures a balance between protecting worker interests and maintaining productive industrial relations.

5.Labour law in China

China's labour regulatory framework is established through several key legislative instruments designed to safeguard workers' rights and welfare. The primary statutes include the Labour Law

of the People's Republic of China (1994), the Trade Union Law, and the Employment Promotion Law, which collectively ensure fundamental protections such as minimum wage standards, workplace safety regulations, and social security benefits. The 1994 Labour Law serves as the foundational legislation, governing employment relationships and establishing formal mechanisms for dispute resolution. While this law recognizes workers' rights to unionize and strike through its provisions, it simultaneously imposes specific procedural requirements and limitations on industrial actions. The legal framework reflects China's approach to balancing worker protections with maintaining industrial harmony and economic development objectives.

6.Labour law in Japan

Japan's comprehensive labour protection system is established through several key legislative measures, including the Labour Standards Act (1947), Trade Union Act, Industrial Safety and Health Act, and Workers' Accident Compensation Insurance Act. These statutes collectively safeguard fundamental worker rights by establishing minimum wage standards, occupational safety requirements, and comprehensive social security benefits. The Labour Standards Act serves as the cornerstone of Japanese employment law, governing all aspects of employer-employee relationships while establishing formal procedures for conflict resolution. This foundational legislation guarantees workers' rights to unionize and engage in collective action, though it imposes specific regulatory constraints on strike activities to maintain industrial harmony. Additionally, the Act prescribes crucial workplace standards, including limits on working hours and mandatory rest periods, reflecting Japan's balanced approach to protecting worker welfare while supporting economic productivity.

7.Similarities in labour of different countries

7.1. Similarities in protection and benefit for workers

The structural and historical parallels in labor law development across nations have led to notable similarities in the regulatory frameworks of China, Russia, and the United States⁹. These shared legal foundations reflect common adherence to universal principles of fairness equality,

⁹ Cooney, S., Gahan, P., & Mitchell, R. (2011). Legal Origins, Labour Law and the Regulation of Employment Relations. In Research Handbook of Comparative Employment Relations (pp. 75-97). Cheltenham: Edward Elgar.

equity, and need manifested in comparable legislative measures.

Minimum Wage: All three nations mandate baseline wage thresholds, adjusted periodically, demonstrating a shared commitment to equality. While implementation varies locally, the principle that workers deserve a fundamental, equitable wage remains consistent across jurisdictions.

Overtime Pay: Each country requires premium compensation for extended work hours, though eligibility criteria differ. China stipulates overtime pay for daily work exceeding eight hours or weekly work surpassing 40 hours¹⁰, whereas Russia and the U.S. apply it beyond a 40-hour workweek. This reflects the equity principle, acknowledging that additional labor merits higher remuneration.

Social Insurance Contributions: Employer-funded payroll taxes in all three nations support social safety nets, including retirement benefits, embodying the need-based principle. These systems recognize that workers require financial security beyond immediate wages, ensuring support during later life stages. While prior research predominantly examines labor laws from the worker-protection perspective, employment is inherently a bilateral relationship. Thus, understanding regulatory impacts on employers is equally critical—an aspect explored in the subsequent discussion¹¹.

7.2. Similarities in protection and benefit for employers

While labor laws in China, Russia, and the U.S. all grant employers certain protections against counterproductive worker behavior, the extent of these rights varies significantly. In the U.S., the "employment-at-will" doctrine allows employers to terminate workers without justification, though exceptions exist for tenured, unionized, or government employees, who require "just cause" for dismissal. By contrast, China and Russia largely follow a "just cause" approach, where termination after probation requires proof of rule violations. In China, fixed-term or open-ended contracts further regulate dismissals¹², while Russia mandates evidence of

¹⁰ Boguen, A. (2019). *Understanding China Employment and Labor Law*. Shanghai: New Horizons Global Partners.

¹¹ Wang, J. T. (2009). Comment: Article 14 of China's New Labor Contract Law: Using Open-Term Contracts to Appropriately Balance Worker Protection and Employer Flexibility. *Pacific Rim Law & Policy Journal*, 18, 433.

¹² Yang, G. (2017). *The China Employment Law Guide*. Seattle, Washington DC: TCK Publishing.

serious misconduct¹³. Though all three systems balance employer and worker protections, labor laws prioritize employee safeguards—reflecting a need-based fairness principle that addresses the inherent power imbalance favoring employers, who can more easily replace workers. Governments thus intervene to mitigate this asymmetry.

7.3. Comparison of similarities across countries

Labor laws across nations share common structural foundations and legal sources, typically featuring national frameworks with localized adaptations, constitutional provisions, and federal regulations. This pattern suggests that mimetic isomorphism—the tendency of institutions to emulate established models helps explain the global evolution of labor regulations. However, despite these shared foundations, distinct variations persist. For instance, while all three countries mandate minimum wages and periodic adjustments, wage levels differ significantly, reflecting constraints imposed by local economic conditions. This implies that equality-based fairness operates within national boundaries rather than across them, with each country defining its own benchmarks for equitable treatment. Similarly, overtime pay provisions reveal both alignment and divergence: all three countries require premium pay for weekly hours exceeding 40, but China uniquely extends this to daily work beyond 8 hours. Such differences illustrate how equity-based fairness rewarding additional labor is implemented contextually. Employer protections also exhibit partial convergence, likely influenced by mimetic pressures. Businesses universally seek flexibility to manage unproductive workers, yet termination policies vary markedly. China and Russia enforce "just cause" standards, offering workers greater job security than the U.S.'s predominant "at-will" employment model. This contrast underscores how need-based fairness addressing power imbalances is prioritized differently, with China and Russia imposing stricter safeguards for employees.

8. Difference in labour law across countries

8.1. Difference in protection and benefit for workers

All three countries recognize paid holidays, though their implementation varies.

¹³ Gerasimova, E., Korshunova, T., & Chernyava, D. (2017). New Russian Legislation on Employment of Teleworkers: Comparative Assessment and Implications for Future Development. *Pravo. Zhurnal Vysheyshkoly Ekonomiki*, No. 2, 116-129.

China and Russia mandate paid leave for designated national holidays,

Holidays and Paid Leave Policies Across China, Russia, and the U.S: grantees paid holidays for federal employees, leaving private-sector policies to employer discretion. The selection of holidays reflects each nation’s cultural and historical priorities:

- **China** observes holidays tied to social traditions, including Lunar New Year, Qing Ming Festival, and National Day (Yang, 2017).
- **Russia** blends international holidays (e.g., New Year’s Day) with historically significant dates like Victory Day and Constitution Day (IBP, 2016).
- **The U.S.** designates federal holidays (e.g., Independence Day, Thanksgiving) but does not universally mandate paid leave.

Mandated paid holidays in China and Russia exemplify equality-based fairness, ensuring uniform benefits for all workers.

Vacation Policies: China and Russia also guarantee paid vacations, unlike the U.S., where vacation policies are employer-determined.

- **Russia** mandates 28 days annually for all employees, reflecting equality-based fairness¹⁴.
- **China** ties vacation days to tenure (5–15 days based on service length), aligning with equity-based fairness¹⁵.

Written Employment Contracts: China and Russia require written contracts for all workers, ensuring baseline protections (equality-based fairness) and addressing worker vulnerabilities (need-based fairness). The U.S. lacks this mandate, though contracts are common for high-level roles. While all three countries incorporate fairness principles in labor laws, their approaches diverge based on cultural, historical, and economic contexts. China and Russia emphasize stronger worker protections, whereas the U.S. prioritizes employer flexibility.

¹⁴ International Business Publications (IBP) (2016). Russian Business Law Handbook Vol. 16 Labor Laws and Regulations.

¹⁵ Yang, G. (2017). The China Employment Law Guide. Seattle, Washington DC: TCK Publishing.

8.2. Difference in protection for employer

While employer protections show considerable similarity across nations, non-compete agreements represent a significant divergence in labor regulations. These restrictive covenants, which prevent employees from joining competitors or disclosing proprietary information (including trade secrets, client data, and operational methodologies), are subject to distinct national approaches.

China permits non-compete clauses for senior executives for a maximum duration of two years, contingent upon employer compensation. Enforcement requires reasonable geographic limitations, with breach penalties potentially imposed on employees. Conversely, Russia generally prohibits such agreements¹⁶. The United States lacks federal non-compete legislation but allows state-regulated enforcement with restrictions on duration, scope, and geographic applicability.

The justification for enforceable non-compete agreements in China and certain U.S. jurisdictions aligns with equity-based fairness principles. Employers who invest in developing employee expertise retain a legitimate interest in safeguarding their competitive advantage and intellectual capital. This regulatory variation underscores how different legal systems balance employer protections with workforce mobility.

9. Findings

This comparative analysis reveals that labor regulations across nations share fundamental structural foundations while demonstrating distinct approaches to balancing employer-employee power dynamics. Three core fairness principles—equality, equity, and need—help explain both the convergences and divergences in these legal frameworks.

A consistent pattern emerges wherein labor laws predominantly favor worker protections over employer interests. This imbalance reflects the inherent power disparity in employment

¹⁶ Daurbekov, A. (2018). Agreement of Non-Competition in the Labor Law of China. *Sociopolitical Sciences*, 3, 127-130.

relationships, where employers typically hold greater leverage. Consequently, legislation tends to prioritize safeguarding employee rights through these fairness principles.

These policy differences manifest most clearly in the U.S. system, where benefits like paid leave and comprehensive contracts primarily emerge through collective bargaining or state-level legislation rather than federal mandates. The findings suggest that while all three nations address power asymmetries through labor laws, they do so through varying degrees of regulatory intervention.

10. Conclusion

This examination of labor regulations across five major economies reveals distinct national approaches shaped by historical, cultural, and political factors. The study highlights both converging principles and diverging implementations in worker protections. India's labor framework emphasizes worker safeguards but faces criticism for regulatory rigidity, prompting recent reforms to enhance business competitiveness while maintaining employee protections. China's system prioritizes social stability and worker rights, though enforcement challenges persist, particularly regarding migrant labor populations. Japan maintains rigorously enforced labor standards with strong corporate social responsibility traditions, yet gaps remain in protecting non-permanent workforce segments. The United States employs a decentralized model blending federal and state regulations, offering robust individual rights protections while facing critiques of sector-specific coverage gaps. The United Kingdom favors labor market flexibility, though this approach has raised concerns about gig economy worker securities.

The analysis underscores the universal challenge of balancing employer interests with worker protections in evolving economic landscapes. Each jurisdiction demonstrates unique adaptations to this equilibrium, reflecting their socioeconomic priorities. The research suggests that effective labor policy requires:

1. Continuous legal adaptation to changing workplace realities
2. Careful calibration of flexibility and protection measures
3. Targeted responses to emerging employment models

This comparative perspective emphasizes that while labor systems vary significantly in structure and implementation, all face the common imperative of maintaining relevance in dynamic global labor markets through thoughtful, context-sensitive reforms.

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ARE HUMAN RIGHTS A LINCHPIN OF ILO – A DISCOURSE WITH REFERENCE TO INDIA

- ARUN R¹⁷

Abstract

The protection of individual rights is one of the most prominent developments of modern international law. Two key dimensions in this regard are international labour law on the one hand and international human rights law on the other hand. The human rights protected by international human rights instruments include a number of labour rights. Many universal human rights, such as freedom of expression, the right to life, the right to personal integrity and liberty and the prohibition against torture, relate to labour rights since they are a prerequisite to enjoying those rights.¹⁸ The ILO has always iterated the principle of human dignity at work, setting trends even before the UN Charter. There is no doubt that labour rights which are documented and expressly declared as human rights are considered to be the same, the less expressed labour rights are often ignored. ILO in its functioning has always fomented a human rights approach emphasising the core human values at work and expediting the advancement of other rights which complements them. This paper discusses ILO's human rights approach and its impact in Indian labour jurisprudence.

Keywords: ILO, Labour Rights, Human Rights, Decent Work and Rights at Work.

Natural Rights and Labour Rights

In the words of Justice J.S Verma, 'Human Dignity is the quintessence of Human Right.'¹⁹ Human rights are all those rights which are essential for the protection and maintenance of dignity of individuals and creates conditions in which every human being can develop his

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¹⁸ Bridging the gap between labour rights and human rights: The role of ILO law in regional human rights courts France Christian Ebert and Martin Oelz [EbertandOelz.pdf](#)

personality to the fullest extent.²⁰ The concept of human rights has its roots in the theory of natural rights. The enlightenment philosophy fuelling the French revolution advocated for reason and liberty in place of religion and traditional beliefs. There were three divisions in French society.

France

The clergy were considered to be the first estate, the nobility the second, the peasant-laborers the third, and the merchants and intelligentsia the middle class. The favoured class comprised the first and second estates, while the oppressed class comprised the third. The church, feudatories, and kings all took use of them. As a result, they were split into two classes—the exploiting class and the exploited class—which exacerbated their conflict. Though the revolution had a momentum for civil and political rights, labour rights found its place in the French revolution with the workers in Paris organising a series of strikes and protests against their employers in the spring of 1791.

Many deputies believed that the workers still acted in a communal rather than an individual capacity and still had a guild mentality, most notably Isaac-René-Guy Le Chapelier. As a result, Le Chapelier believed that their demands for increased wages went against what he claimed were the new Revolutionary values. He introduced a legislation also known as ‘Le Chapelier law’ (which became law on June 14, 1791) that prohibited worker groups or formation of trade unions based on such economic objectives for the cost of war, corruption, oppressive taxes, and the opulent lifestyle of the royalty were the main causes of this.²¹ The prohibition on strike and formation of unions was eventually removed through Loi Ollivier and Waldeck Rousseau’s Loi. Workers union did bring other changes in laws on working conditions by prohibition of child labour below the age of ten in 1813, designating Sundays as rest days in 1814, regulation of working hours as early as 1848 and protection of women workers in 1874.²²

England

²¹Liberte, Egalite and Fraternite, Le Chapelier Law · LIBERTY, EQUALITY, FRATERNITY: EXPLORING THE FRENCH REVOLUTION (chnm.org)

²² Jerome Bourdieu, Benedicte Renaud, Factory Discipline, Health and Externalities in the Reduction of Working Time in Nineteenth-Century France Vol4, Socio-Economic Review

In England, the regulation of workplace relations was based on status rather than contract or negotiation through a system of trade unions. The majority of people lived in serfdom, with the exception of towns where craftsmen may benefit from some level of self-regulation through guilds. The Act of the Apprentices 1563 granted the power to decide and fix wages to the Justices of Peace. The [Statute of Labourers](#), passed in the fifth year of [Elizabeth I of England](#)'s reign (1562) regulated wages, punishment for refusal to work and labour migration. The Industrial Revolution, the Master Servant Act 1823, Truck Act 1831, Factory Act 1833, Abolition of Slavery Act 1833, Mines Act 1842, Trade Unions Act 1871 were followed by other legislations laying the foundations of labour law in England.²³ Any movement relating to human rights, be it French renaissance or industrial revolution, even on rights of civil and political colours, deep connection to unionisation of labour and conditions related to labour can be inferred. Though the historical context discussed above is not exhaustive in context, the close relation between the struggle to achieve human rights and the realisation of labour rights are easily established.

India

The labour movement began the contemporary ideas of labour rights in India. The East India Company landed in India in 1600 to trade under a royal charter and gradually began exercising its control politically. The Battle of Plassey in 1757 sealed British rule in India. With the advent of the British, infrastructure development was introduced with the construction of railways, roads and canals. The capitalist approach of the British led to the establishment of factories and other establishments employing Indians as cheap labour. The plantations and railways employed thousands of Indians. The imperial power exported primary products from India as fuel to English industrialization and was transformed to be an agricultural colony of the British. Large-scale private industries were set up in 1850's with units manufacturing jute and cotton. Wool, paper mills, breweries, tanning and leather manufacturing are a few others to mention.²⁴ The pattern of industrial development which had emerged in the 19th century—confined to a limited sector and concentrated in a few unevenly distributed areas—remained virtually unchanged till the beginning of World War I, though within these narrow limits the years 1905-14 witnessed a

²³ History of Employment Laws, Morton Fraser, [History of Employment Law - Lexology](#)

²⁴ Industrial Development in India during the British Rule, Pratik Sharma, History Discussion

relatively rapid growth.²⁵

This phase witnessed aggravated exploitation of labour which acted as a catalyst in the national freedom struggle. Indian workers were forced to endure adverse and unfavourable working conditions. Work in the mills started every day at daybreak and ended at nightfall in the early stages. Men, women, and children worked as labourers from dawn to dusk with no break. The workers were not given weekly holiday or vacations. The mill's heat, humidity, noise, dust, and suffocating atmosphere would last the entire day. Every time a labourer skipped work, they lost their day's pay. There were also a lot of fines for things like arriving late for work or if the fabric was damaged. In the summer, all labourers were required to put in 14 hours of such labour, and 12 hours during the winter.²⁶

Various instances of strikes were reported since 1870. The intense dissatisfaction of workers resulted in agitations which eventually led to the appointment of a committee in 1875 to enquire into the working conditions of factories in India and the enactment of the first labour legislation in colonial India, the Factories Act of 1881. The Act was applicable to factories employing more than one hundred workers. The Act restricted employing children below the age of seven and the working hours of children were fixed at 9 hours. Meal interval and weekly holiday was also laid down. The Act was revised in 1891 and a Royal Commission on Labour was appointed in 1892 to look into the adverse labour conditions. The first official strike is dated 1895 declared by the Ahmedabad weavers against payment of wages. In 1900-01, the wages of the labourers were decreased by 12.5 per cent by about 20 Mumbai mills. 20,000 mill workers went on strike as a result, stopping their operations. For ten days, all 20 mills were closed.²⁷ This struggle ran in parallel with the struggle for independence. Labour unions were established in order to organise strikes and conduct negotiations with mill owners. Trade unions gradually started to promote workers' rights and welfare all throughout the year, not just during strikes. They included many individuals who were affected by socialist ideas. Gandhiji's influence led to the creation of the Mazdoor Mahajan union in Ahmedabad. Amalgamated Society of Railways Servants of India and Burma, Indian Labour Union, Printers Union are a few others to mention. Union formation

²⁵ R C Majumdar

led to better recognition of labour conditions which led to further revision in the Factories Act in 1911.

The parallel struggle for independence was an intertwined labour movement with the formation of the Indian National Congress, Bengal Partition, and Swadeshi Movements. World War I and its aftermath effects drastically affected the labour situation with large-scale unemployment and retrenchment which acted as an impetus to the freedom struggle as well as the labour movement. Though the early labour leadership consisted of well-intentioned social workers guided by humanitarian considerations, the second phase after the World War I laid the foundation for a strong labour movement in India.²⁸ As far as nationalists were concerned, they were so taken with the industrialism doctrine that they viewed any legislative intervention to improve the horrendous working conditions as needless and uncalledfor. Early nationalists only cared about the plight of the peasantry, not the agony of the working classes.²⁹ The industrial workers were not mentioned in the Indian National Congress's early resolutions either. If the protests were directed towards Indian industrialists, nationalists did not support them and preferred that domestic disputes be settled without the involvement of the government. However, many nationalists backed the workers if the demonstrations were directed against the colonial administration.

There was no coordinated effort to improve the working conditions of the labour until the Swadeshi movement of 1903–08. Workers movement also further strengthened with the Home Rule and Non Cooperation Movement. The formation of All India Trade Union Congress AITUC and its transformation as a central organisation to manage trade unions all over India with support from the Indian National Congress had a positive start but started to wear away with the split in AITUC. The incorporation of the International Labour Organization in 1919 was another significant development.³⁰

The labour movement has associated with various models of crafts, communities, economic

³⁰G Ramannujam, Indian Labour Movement

services, membership and even political orientation.³¹ The initial ideology behind the labour movement in its nascent stage was focussed on welfare activities. Their work was primarily altruistic and did not involve much politics. Persuasion was their primary goal and to improve the poor working conditions of labourers, the colonial authority passed laws. The right to form association was recognised through the enactment of the Trade Unions Act 1926, a landmark in the history of labour movement. The period between World War I and II was characterised by infusion of communism resulting in splits and ideological differences. The first fast by Mahatma Gandhi in 1918 was a response to low wage and pathetic labour conditions of weavers under a babul tree in Ahmedabad. Time to time wage revision and bonus demands followed in the coming years. This instilled a spirit of unity which gave momentum to the freedom struggle. India's path to independence has its roots in the labour movement.³² The revision of Factories Act and Mines Act and enactment of Workmen's Compensation Act, Payment of Wages Act, Trade Disputes Act were significant advancements in labour movement. After independence, the process of development must involve labour as the driving force behind all changes that are to be introduced in the full range of economic activities, from resource generation and deployment to the production of goods and services, providing access to such goods and services through an appropriate distribution system.³³ A slew of legislation protecting rights of labour from right to form association to right to social security were enacted. Legislations focussing on human labour right violation of specific working groups such as manual scavengers, agricultural workers, migrant workers, bonded labours, child labours were also drafted and implemented from time to time to address human rights violations in addition to the constitutional mandates.

ILO on Labour Rights and Human Rights

General Instruments- UDHR and Human Rights of Labour

The UN Charter was framed to reaffirm the fundamental human rights of individuals in recognising their dignity and worth by protecting their rights and promoting better standards of

³¹ Pong-Sul Ahn The Growth and Decline of Political Unionism in India – The Need for Paradigm Shift ILO 2015-1

³² Ananthan V Kurup, Impact of World War I on the Labour Movement

³³ S P Mukerjee, Labour: The Lever of Development Role of India in India's Development, V VGiri National Labour Institute

living.³⁴The UDHR in 1948 incorporated the fundamental right to decent work which has been the foundation of all labour standard settings and policy-making at international and national levels. Article 3 lays down that everyone has the right to life, liberty and security; Articles 4 and 5 prohibits all forms of slavery, cruel or inhuman treatment. Article 20 provides for right to freedom of peaceful assembly and association; Article 22 lays down right to social security through national and international efforts. Right to work expounded in Article 23 includes right to free choice of work, just and favourable conditions of work and protection against unemployment, equal pay for equal work, just remuneration and freedom to join trade union. Article 24 also discusses right to rest and leisure and periodic holidays and Article 25 stresses on right to standard of living, health and security. UDHR also discusses the right to education, right to cultural life and duties to the community. International labour standards which have been instrumental in nurturing human rights at work includes right to work, right to safe and healthy working environment, right to fair wages and equal remuneration, right to rest and leisure, limitation of working hours and periodic holidays with pay and right to maternity protection.

Human rights at work have consistently been the focal point of ILO. The conventions, recommendations and guidelines by the ILO have always aimed at upholding fundamental labour rights as human rights which have been promoted progressively through the international labour standards which complement human rights at work. ILO's core principles have been designated through declarations drafted from time to time by the International Labour Conference since its inception. The 1944 Declaration of Philadelphia, a visionary document that was annexed to the ILO's constitution declared the centrality of human rights for all people. The 1998 Declaration on Fundamental Principles and Rights at Work which was amended in 2022 with a follow up procedure affirms the obligations and commitments namely freedom of association and the right to collective bargaining, the elimination of all forms of forced or compulsory labour, the effective abolition of child labour, the elimination of discrimination in respect of employment and occupation and [a safe and healthy working environment](#).³⁵

³⁴Human Rights Law and Freedom of Association: Development through ILO Supervision Lee Swepstonation through ILO supervision 169 Copyright © International Labour Organization 1998 International Labour Review, Vol. 137 (1998), No. 2 [swepston.pdf](#)

³⁵[ILO Declarations](#)

Freedom of Association and Right to Organize

Freedom of association implies free flow of information, opinions and ideas freedom to assemble and protection of trade union members. The ILO Constitution upholds the notion of freedom of association as a way of enhancing working conditions and guaranteeing workplace tranquillity. The 1944 Declaration of Philadelphia, which forms part of the ILO Constitution, states that the fundamental values upon which the Organization is founded (freedom of expression and of association) are necessary for sustained development at the workplace. With the adoption of Freedom of Association and Protection of the Right to Organise Convention (No. 87) in 1948, the said rights found its way to the UDHR. Freedom of association implies the free flow of information, opinions and ideas, freedom to assemble and protection of trade union members. The Treaty of Versailles also provided for right of association for all lawful purposes for both employers and workers. ILO from time and again has reaffirmed the inclusion of right to association as a fundamental principle.

The ILO's standards on human rights along with the instruments adopted in the UN and in other international organizations give practical application to the general expressions of human aspirations made in the Universal Declaration, and have translated into binding terms the principles of that noble document.³⁶In June 1998, the International Labour Conference adopted the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, which states that "all Members, even if they have not ratified the [fundamental] Conventions have an obligation, arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions". These principles include freedom of association and the effective recognition of the right to collective bargaining under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).³⁷Under the Freedom of Association and Protection of the Right to Organise Convention, 1948, workers and

³⁶ ILO: Report of the Committee of Experts on the Application of Conventions and Recommendations: General report and observations concerning particular countries, Report III (Part 1A), International Labour Conference, 86th Session, 1998, Geneva, pp. 16-17, paras. 56-58

³⁷Freedom of Association Bernard Gernigon, Alberto Otero, Horacio Guido pg. 5-12

employers have the right to establish or join organisations subject to and without prior authorisation from the organisation in which they are employed. The 2022 amendment of the declaration reiterates and recognises ILO's commitment to freedom of association and right to collectively bargain.

Apart from these conventions, The Right of Association (Agriculture) Convention, 1921 (No. 11) provides for right of association to agricultural workers, The Rural Workers' Organisations Convention, 1975 (No. 141) provides for rural workers organisations, The Labour Relations (Public Service) Convention, 1978 (No. 151) provides for right to association for persons employed by public authorities, The Migration for Employment Convention (Revised), 1949 (No. 97) provides for non-discrimination of membership in case of migrant workers and The Indigenous and Tribal Peoples Convention, 1989 (No. 169) provides for indigenous and tribal peoples the right to association and conclusion of collective bargaining agreements.

Collective Bargaining

The Declaration of Philadelphia 1944, also recognises the right of collective bargaining. The principal convention Right to Organise and Collective Bargaining Convention, 1949 (No. 98), defines collective bargaining as, "all negotiations which take place between an employer, a group of employers or one or more employers' organisations, on the one hand, and one or more workers' organisations, on the other, for: (a) determining working conditions and terms of employment; and/or (b) regulating relations between employers and workers; and/or (c) regulating relations between employers or their organizations and a workers' organisation or workers' organisations." Right to collective bargaining was also recognised to be one of the fundamental principles of rights at work in the ILO Declaration on Fundamental Principles and Rights at Work 1998.³⁸ The Right to Organise and Collective Bargaining Convention, 1949 guarantees protection to workers against anti-union discrimination by employers and interference by each other in each other's organisations established thus ensuring the respect for right to organise. Although Convention No. 98 refers to the protection that shall be enjoyed by workers and trade union members, it does not specifically address the issue of the protection of workers'

³⁸Collective Bargaining Bernard Gernigon, Alberto Otero, Horacio Guido pg.

representatives or the facilities necessary for them to perform their duties. The Workers' Representatives Convention, 1971 (No. 135) supplements the provisions of Convention No. 98 relating to anti-union discrimination.

Forced Labour

Forced labour is defined as work done against one's will and under the threat of punishment. It describes circumstances in which people are made to work by the use of force or intimidation, as well as more covert methods including manipulation of debt, holding onto identity documents, or threats of reporting to immigration officials. According to the ILO [Forced Labour Convention, 1930 \(No. 29\)](#) forced or compulsory labour is "all work or service which is exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily." In a way to give new impetus to the global issue of forced labour and slavery like practices, the 2014 protocol to the 1930 convention was adopted to provide complementary specific guidelines to eliminate all forms of forced labour. These guidelines are non-binding practical measures in the areas of prevention, protection of victims, access to justice, remedies, enforcement and international cooperation on matters of forced labour.³⁹ The Abolition of Forced Labour Convention 1957 (No. 105) deals with forced labour by state authorities as punishment for expressing political views or for the purpose of economic development, labour discipline, punishment for participating in strikes or means of racial, religious or other discrimination.⁴⁰

Employing Young Persons and Child Labour

The first convention which marked the beginning of ILO's chapter on rights of children was the Minimum Age (Industry) Convention, 1919 (No. 5) prescribing the minimum age to be employed in an industry. This was revised from time to time till 1972. Various other conventions prescribing minimum conditions of work and medical examination of young persons were also drafted.⁴¹ Child labour was discussed as early as in Forced Labour Convention, 1930 (No. 29).

³⁹ Strengthen the Global Fight Against all Forms of Forced Labour, [wcms_321414.pdf \(ilo.org\)](#) see also [Protocol P029 - Protocol of 2014 to the Forced Labour Convention, 1930 \(ilo.org\)](#)

⁴⁰ The Abolition of Forced Labour or Compulsory Labour Max Kern and Carmen Sottas

⁴¹ The Night Work of Young Persons (Industry) Convention, 1919 (No. 6); the Night Work of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 79); the Night Work of Young Persons (Industry) Convention (Revised), 1948 (No. 90); the Night Work of Young Persons (Non-Industrial Occupations) Recommendation, 1946

The Minimum Age Convention, 1973 sets the minimum age for admission into employment at fifteen years and thirteen years for light work and eighteen years for dangerous works.⁴² The Convention on the Rights of the Child 1989 threw light on the international issue of the exploitation of children. The International Programme for the Elimination of Child Labour (IPEC) in 1992 followed by the adoption of the Worst Forms of Child Labour Convention, 1999 (No. 182) served as a trendsetter in the field of child rights. The goals and motives on child labour rights were furthered in the ILO Declaration on Fundamental Principles and Rights at Work.

Equality of Opportunity

The Philadelphian Declaration states that “all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity”.⁴³ The Equal Remuneration Convention, 1951 (No. 100) was the first convention which called the signatories to promote equality in terms of pay. The Discrimination (Employment and Occupation) Convention (No. 111) 1958 further prohibits discrimination on grounds of race, colour, sex, religion, political opinion, national extraction and social origin. In 1975, the International Labour Conference adopted the Declaration on Equality of Opportunity and Treatment for Women Workers provided for the protection of women workers on the same standards as that of men workers. The ILC also adopted a resolution on equal opportunities and equal treatment for men and women in employment in 1985.⁴⁴

Social Security

The right to social security has been enshrined in several human rights instruments adopted by the United Nations, and is expressly formulated as such in fundamental human rights

(No. 80); and the Night Work Recommendation, 1990 (No. 178). The Medical Examination of Young Persons (Sea) Convention, 1921 (No. 16); the Medical Examination of Young Persons (Industry) Convention, 1946 (No. 77); the Medical Examination of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 78); the Medical Examination of Young Persons (Underground Work) Convention, 1965 (No. 124); and the Medical Examination of Young Persons Recommendation, 1946 (No. 79).

⁴²Convention C138 - Minimum Age Convention, 1973 (No. 138) (ilo.org)

⁴⁴Equality of Opportunity and Treatment in Employment and Occupation Constance Thomas and Yuki Horii

instruments, namely the Universal Declaration of Human Rights (UDHR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The right to social security is also enshrined in UN legal instruments setting out the rights of specific population groups, such as the Convention on the Elimination of All Forms of Discrimination Against Women (1979), the Convention on the Rights of the Child (1989), the Convention on the Elimination of All Forms of Racial Discrimination, (1965), the International Convention on the Protection of the Rights of All Migrant Workers and Their Families (1990), and the Convention on the Rights of Persons with Disabilities (2006).⁴⁵

The right to safe and healthy work conditions was not initially recognized in the ILO Declaration of Fundamental Principles and Rights at Work 1998.⁴⁶ The International Labour Conference at its 110th session in 2022 amended its second paragraph of the ILO Declaration on Fundamental Principle and Rights at Work 1998 to include safe and healthy working environment as fundamental principle and right at work. The International Labour Conference designated the Occupational Safety and Health Convention, 1981 (No. 155) and Promotional Framework for Occupational Safety and Health Convention 2006 as one among the ILO fundamental convention. These conventions serve as the foundation for principles and rights relating to occupational safety and health and serves as road map for future measure on national and international planes.⁴⁷

Apart from the major conventions, there are other special conventions which mandate the labour rights of the vulnerable workforce. There are specific conventions concerning employment of women such as Convention No. 183 concerning Maternity Protection, Convention No. 110 concerning Employment of Plantation Workers, Convention No. 41 concerning Night Work of Women and Convention No. 45 concerning employing women in underground work. Social security conventions cover varied areas of work life which require protection such as Convention No. 12, 17, 18, 23, 25, 42 and 121 concerning compensation for employment injury during

⁴⁵Building Social Security Systems: International Standards and Human Rights Instruments International Labour Office – Geneva: ILO, 2021

⁴⁶ ILO Convention 155 Occupational Safety and Health Convention, 1981 (No. 155): Article-by-Article Commentary, Edoardo Ales, Part 6 Health and Safety Law pg 1394 available at [ResearchGate](#)

⁴⁷A safe and healthy working environment is a fundamental principle and right at work, available at [A safe and healthy working environment is a fundamental principle and right at work \(Safety and health at work\) \(ilo.org\)](#)

employment and its related benefits covering occupational diseases. Convention No. 168 concerns employment promotion and protection against unemployment and Convention No. 130 discusses Medical Care and Sickness Benefits to employees. Old Age, Invalidity and Survivors Insurance is laid down comprehensively in Convention No. 128. Conditions and recommendations relating to employing young persons are exhaustively propounded in conventions such as convention no. 5 concerning minimum age of workers in industry 1919, convention no. 90 concerning Night Work of Young Persons (Industry) 1948, convention no. 123 and 138 prescribing minimum age of work in underground or admission into employment. Apart conventions, ILO also strategizes its aims through work groups, action plan, ILO projects and policy regulation.⁴⁸

The ILO has a highly functional follow up mechanisms for effective implementation of its principles. The International Labour Conference, the Governing Body and the International Labour Office serve as organs and share responsibility in conducting the work of ILO. All ratified ILO Conventions are dealt with by the ILO's Committee of Experts on the Application of Conventions and Recommendations. Governments report at regular intervals, and the Committee of Experts makes any comments that may be called for. In more difficult cases, the situation is referred to the tripartite Conference Committee on the Application of Standards in the annual session of the International Labour Conference, where the government concerned may be invited to come and discuss its situation in a public forum, as with other ILO Conventions. In addition to these mechanisms, other governing bodies, Inquiry or fact-finding commissions are established under specific conventions for its implementation. The methodology of the ILO ties a human rights approach to concrete principles that target the problems of a specific sector exemplifying how labour rights as human rights can be intertwined with labour standards in law. The human rights approach recognises the universality, and the moral weight and urgency workers' claims.⁴⁹

Role of ILO in protecting Human Rights in India

⁴⁸Commentary on the International Labour Organisation and the Indian Response Prof. Ahmedullah Khan S.P Gogia (H.U.F) 2014

⁴⁹Are Labour Rights Human Rights? Virginia Mantouvalou European Labour Law Journal, 3(2) pg 26 available at [ResearchGate](#)

India is one of the founding members of ILO. With the constitution of ILO in 1919, power to legislate on labour was vested with the central legislature under the Government of India Act 1919. The Government of India Act 1935 demarcated regulation of labour and safety in mines, oilfields, railways and major ports under the central legislature and labour welfare in factories, trade unions, provident fund, pension and insurance matters under the concurrent list with overriding powers vested with the central legislature which was subsequently adopted in the final Indian Constitution. Though India's ratification of the conventions and membership in the ILO before independence was largely influenced by the British, the tripartite principle was adopted as early as 1942 when the Tripartite Labour Organisation was set up. This continued after independence, with the principle being incorporated into labour relations and legislation. ILO's role in India has been adopted through the following methods:

- a) **Promotion of labour laws:** ILO has played a crucial role in promoting labour laws in India, particularly in areas such as child labour, forced labour, and discrimination at the workplace
- b) **Capacity building:** ILO has provided technical assistance to the Indian government, workers' organizations and employers' associations to build capacity in areas such as social protection, occupational safety and health, and social dialogue
- c) **Support to small and medium enterprises:** ILO has been supporting small and medium enterprises (SMEs) in India through various initiatives aimed at improving working conditions and promoting decent work
- d) **Advocating for gender equality:** ILO has been advocating for gender equality in the Indian workplace and has been working to eliminate discrimination against women in the workplace

ILO's influence on workers' rights in India is evident from the various labour legislations and its revisions and amendments done with the passage of time to keep India's commitment to International Labour Standards. The conventions ratified by India cover a range of issues including forced labour, child labour, equal pay for equal work, right to organise and collectively bargain, safety and health of workers. The ratification of these conventions demonstrates India's

commitment to promoting decent work and workers rights.

Convention	Ratification (Year)
No.1 Hours of Work (Industry) Convention, 1919	1921
No.4 Night Work (Women) Convention, 1919	1921
No.5 Minimum Age (Industry) Convention, 1919	1955
No.6 Night Work of Young Persons (Industry) Convention, 1919	1921
No.11 Right of Association (Agriculture) Convention, 1921	1923
No.14 Weekly Rest (Industry) Convention, 1921	1923
No.15 Minimum Age (Trimmers and Stokers) Convention, 1921	1922
No.16 Medical Examination of Young Persons (Sea) Convention, 1921	1922
No.18 Workmen's Compensation (Occupational Diseases) Convention, 1925	1927
No.19 Equality of Treatment (Accident Compensation) Convention, 1925	1927
No.21 Inspection of Emigrants	1928

Convention, 1926	
No.22 Seamen's Articles of Agreement Convention, 1926	1932
No.26 Minimum Wage-Fixing Machinery, Convention, 1928	1955
No.27 Marking of Weight (Packages Transported by Vessels) Convention, 1929	1931
No.29 Forced Labour Convention, 1930	1954
No.32 Protection Against Accidents (Dockers) Convention (Revised), 1932	1947
No.42 Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934	1964
No.45 Underground Work (Women) Convention, 1935	1938
No.80 Final Articles Revision Convention, 1946	1947
No.81 Labour Inspection Convention, 1947	1949
No.88 Employment Services Convention, 1948	1959
No.89 Night Work (Women) Convention (Revised), 1948	1950
No.90 Night Work of Young Persons	1950

(Industry) (Revised), 1948	
No.100 Equal Remuneration Convention, 1951	1958
No.107 Indigenous and Tribal Population Convention, 1957	1958
No.111 Discrimination (Employment & Occupation) Convention, 1958	1960
No.116 Final Articles Revision Convention, 1961	1962
No.118 Equality of Treatment (Social Security) Convention, 1962	1964
No.123 Minimum Age (Underground Work) Convention, 1965	1975
No.115 Radiation Protection Convention, 1960	1975
No.141 Rural Workers' Organisation Convention, 1975	1977
No.144 Tripartite Consultation (International Labour Standards) Convention, 1976	1978
No.136 Benzene Convention, 1971	1991
No.160 Labour Statistics Convention, 1985	1992
No.147 Merchant Shipping (Minimum	1996

Standards), 1976	
No.122 Employment Policy Convention 1964	1998
No.105 Abolition of Forced Labour, 1957	2000
No.108 Seafarers' Identity Documents Convention, 1958	2005
No.174 Prevention of Major Industrial Accidents	2008
No. 142 Human Resources Development	2009
No. 127 Maximum Weight	2010
No.185 Seafarers' Identity Documents Convention (Revised), 2003	2015
Maritime Labour Convention, 2006 (MLC 2006)	2015
Minimum Age Convention (No.138)	2017
Worst Forms of Child labour Convention(No-182)	2017
P89 Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948	

Available at: [India & ILO | Ministry of Labour & Employment](#)

Social Security: Social security is social protection offered by the state through means of legislation or policy decision or arrangements which provides for individuals in times of crisis

such as old age, incapacity, disability or any other contingencies. Though India has not ratified the main conventions on social security except the Equality of Treatment (Social Security) Convention 1962 and Workmen's Compensation (Occupational Disease) Convention revised in 1937 a slew of legislations providing for social security measures such as Workmen's Compensation Act, Employee State Insurance Act, Bonus Act, Gratuity Act, Maternity Benefit Act, provisions for provident and pension fund were enacted to provide benefits to the workforce.

Maternity Benefit: The Maternity Protection Convention 2000 (No. 183) being the main convention on maternity providing fourteen weeks of leave and cash benefits to women still stand unratified by India.⁵⁰ In fact, we are a step ahead of many countries providing for maternity benefit being revised to 26 weeks from 12 weeks in 2017 which is higher than the 14 weeks prescribed in the Maternity Benefit Convention 2000. The Act also provides for creche facilities at work place, four nursing breaks, leave for miscarriage and sickness relating to pregnancy.

Child Labour: Though the ratification of the Worst Forms of Child Labour Convention No. 182 was done in 2017, Factories Act 1946, Bonded Labour System (Abolition) Act, 1976, Immoral Trafficking Prevention Act, 1956, and Narcotic Drugs and Psychotropic Substances Act, 1985 had already prohibited the activities mentioned in the convention. The Minimum Age Convention No. 138 has been legislatively implemented through the enactment of Child Labour (Prohibition and Regulation) Act, 1986 and through National Child Labour Project, schemes and development programmes.

Right to form Association: There are other legislations and policies enacted in India. The Trade Union Act 1926 is a result of the freedom struggle and the labour movement providing for the right to form association. India is yet to ratify C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98). Yet the existence of a labour legislation providing for and regulating the same is much to be appreciated. The Industrial Employment (Standing Order) Act 1946 and the Industrial Disputes Act 1947 provides for regulation of labour relations and the methods for redressal of trade disputes.

⁵⁰Up-to-date Conventions not ratified by India (ilo.org)

Labour Welfare: The Factories Act 1948, the Plantation Act 1951, The mines Act 1952, the Motor Transport Workers Act, 1961, the Beedi and Cigar Workers (Conditions and Employment) Act 1966, The Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labor Welfare (Cess) Act, 1976, The Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labor Welfare Fund Act, 1976, The Beedi Workers Welfare Cess Act, 1976, The Beedi Workers Welfare Fund Act, 1976, The Cine Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981, The Cine Workers Welfare Fund Act, 1981, The Dock Workers (Safety, Health and Welfare) Act, 1986 are legislation enacted for the welfare of the respective working groups. The Building and Other Constructions Workers' (Regulation of Employment and Conditions of Service) Act, 1996, The Contract Labour (Regulation and Abolition) Act, 1970, The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 are laws dealing with migrant and building construction workers.

According to Article 19(5) of the ILO constitution, member states are under no obligation to ratify the convention except to submit to the appropriate national forum and report on laws and practices back to ILO. They have the freedom to choose on ratifying, not ratifying or postponing ratification.⁵¹ A country's choice to ratify may differ on the implication of ratification and the social, political and economic conditions for, ratification creates immediate legal obligation at an international level on the country to take suitable measures in accordance with the mandatory requirements under the convention.⁵² The voluntary ratification is to encourage the global communities to adopt and implement minimal labour standards at the international level by adapting to differences in development stages. Of the 190 ILO conventions and 206 recommendations, India has ratified 47 conventions and one protocol out of which 39 conventions are still in force.⁵³ To name a few, Worst Form of Child Labour No. 182, Minimum Age Convention No. 138, Seafarers' Identity Document Convention No. 185, Maximum Weight Convention No. 127, Prevention of Major Industrial Accidents No. 174.

However, it is pertinent to note that India has ratified only six of the eleven core conventions.

⁵¹ Maria Anzorreguy, Rita Yip, Global Development of ILO Labour Standards, available at [Employment & Labour Laws and Regulations Report 2022 Global Development of ILO International Labour Standards \(iclg.com\)](https://www.ilo.org/global/employment-and-labour/laws-and-regulations/report-2022-global-development-of-ilo-international-labour-standards-iclg.com)

⁵² Kokila Beriya, ILO and its Impact on Indian Labour Legislation, available at [ILO and its impact on Indian Labour Legislations \(legalserviceindia.com\)](https://www.legalserviceindia.com/articles/ilo-impact-on-indian-labour-legislation.html)

⁵³ Ministry of Labour and Employment, Government of India, [India & ILO | Ministry of Labour & Employment](https://www.mol.gov.in/)

Though the ratification proportion seems to be fair well, the very first core convention on freedom of association and the right to collectively bargain and the more recent conventions on occupational health and safety are impending needs of the hour. The main reason for non-ratification is that the legal obligations created through ratification will be inconsistent with the domestic laws in force such as right to strike, to receive contributions and join foreign organisations etc.⁵⁴ These conventions were marked as a key priority in the Decent Work Programme 2013-17 and is still under consideration. The Decent Work Programme is to provide technical support and assistance to India and other Asian countries to promote livelihood, eliminate child labour, encourage employment generation, empower women and assist vulnerable working groups. The programme has yielded successful results in India since 2008 with effective partnership with Indian government, trade unions and employers organisations. The Decent Work Programme 2018-22 has been designed to prioritize to labour standards to unacceptable forms of work, to create sustainable, decent and inclusive employment in informal sector and to formulate better functioning mechanism for occupational safety, health and environment.⁵⁵ The outcomes of the programme have to be assessed.

Conclusion

Legal empowerment is a process of systematic change through which the poor and excluded become able to use the law, the legal system and legal services to protect and advance their rights and interests as citizens.⁵⁶ The fundamental rights enshrined in our Constitution paved the way for the enforceability of labour rights ensuring social justice in a welfare state. The Directive Principles of State Policy such as equal pay for equal work, maternity benefit, public assistance in case of sickness, old age and disablement, acted as the guiding force in Indian policy making resulting in labour legislation.

The drafters of the Indian constitution have incorporated the central premise of social justice to ensure all social groups are treated equally, regardless of their circumstances. according to the central premise of social justice. The main objective is to guarantee that everyone has equal

⁵⁴ [gyanesh.pdf\(labour.gov.in\)](http://gyanesh.pdf(labour.gov.in))

⁵⁵ India Decent Work Programme 2018-2022 available at [wcms_650119.pdf\(ilo.org\)](http://wcms_650119.pdf(ilo.org))

⁵⁶ Rina Agarwal, Using Legal Empowerment for Labour Rights in India, *The Journal of Development Studies*, Vol 55(3) pg 401

access to work opportunities, regardless of social standing. Social equity is the process of establishing equitable standards for all people through legal requirements. Social security refers to a person's total sense of safety in their family, place of job, and society. The social security system provides for both essential requirements and unforeseen life occurrences in order to maintain a sufficient level of living. In order to combat social dangers, which are at the core of labour regulations, it proposes collective action. Because the state of the national economy has a substantial influence on labour laws in every nation, this concept states that the nation's general economic position must be taken into account while enacting labour laws. All these principles have been beautifully incorporated right from the preamble of the Indian Constitution which describes that the state shall ensure social, economic and political justice, liberty of thought, expression, belief, faith and worship and equality of status and opportunity in assuring the dignity of an individual. The right to equality has been enshrined in articles 14 to 18 with protective discrimination in favour of women, children and socially and economically backward classes.

Right to freedom to form association has been laid down in Article 19(1)(c) whereby the right to form trade unions is ensured. Right to collectively bargain as a union has also been recognized in India in lieu of the same. Article 23 prohibits trafficking in human beings and forced labour and Article 24 prohibits employment of children below the age of fourteen. Article 39 under the directive principles of state policies has directed that the government should ensure adequate means of livelihood for all and equal pay for equal work for both men and women workers. The state should also direct its policies to ensure the health and strength of workers, prohibit employing children in their tender age and prevent persons from engaging in avocations unsuitable to their age or strength giving children opportunities to develop in health manner being protected against exploitation and abandonment. Article 41 rules about the right to work and right to public assistance in cases of unemployment, old age, sickness and disablement. Article 42 provides for just and humane conditions of work and maternity benefit, Article 43 talks about living wage and Article 43-A describes workers participation in management. In light of these constitutional mandates we observe that the current labour laws have been fashioned, laying down parameters for protection of labour rights.

However, despite of these positive changes, the labour legislations failed to cover a large work

force under its purview which led to informalization of workers. With budget cuts to the labour ministry and substantial workers left out of the coverage of the existing labour laws, judiciary in collaboration with civil groups used public interest litigation as a means to secure justice to vulnerable working groups.⁵⁷In *M.C Mehta v. State of Tamil Nadu and Others*, when the issue of child labour in match industry in Sivakasi was taken up, the court constituted an Advocates Committee to visit and report their findings. The court recognized child labour as a national problem and directed survey, frequent inspection, creation of fund and stringent enforcement of Child Labour (Prohibition and Regulation) Act 1986.⁵⁸The Supreme Court's ruling in *Vishakha v. State of Rajasthan* was a game-changing one since it established comprehensive rules to address the problem of sexual harassment of women at work by referring to the Convention on Elimination of All Forms of Discrimination against women which eventually led to the enactment of Prevention of Sexual Harassment at Workplace Act, 2013. Similarly the Supreme Court took notice of child labour in carpet industries in Uttar Pradesh and issued direction for the welfare of the rescued children. The constitutional right to food and basic nutrition was recognised in *PUCL v. Union of India* with systematic government schemes being implemented in line with the directions issued by the Supreme Court. There are numerous other landmark cases which served as milestones in the labour jurisprudence such as *PUDR v. Union of India*, *Sanjit Roy v. State of Rajasthan*, *S alal Hydro Project v. State of Jammu and Kashmir*, *Rajangam, Secretary, District Beedi Workers' Union vs. State of Tamil Nadu and Others etc.* all these cases the courts have taken a human rights approach in ensuring justice.

Labour rights have evolved with time and with seventy-five years of independence, India is and has always been on the progressive path to the realisation of labour rights as human rights. ILO has played a significant role in promoting and edging India to take one step at a time towards recognising and implementing labour rights from the viewpoint of human rights. The Indian legislature and Judiciary have also been symbolic in revolutionising labour jurisprudence. However, painful wage cuts, large-scale retrenchment, forced resignation, lack of quality workplace, discrimination at the workplace, informal workforce coupled with sluggish economic

⁵⁷ Dasgupta, Public interest litigation for labour: how the Indian Supreme Court protects the rights of India's most disadvantaged workers available at [Public interest litigation for labour: how the Indian Supreme Court protects the rights of India's most disadvantaged workers: Contemporary South Asia: Vol 16, No 2 \(tandfonline.com\)](http://Public%20interest%20litigation%20for%20labour%20how%20the%20Indian%20Supreme%20Court%20protects%20the%20rights%20of%20India's%20most%20disadvantaged%20workers%20Contemporary%20South%20Asia%20Vol%2016,%20No%202%20(tandfonline.com)) Contemporary South Asian Journal 2008 Vol 16(2)

⁵⁸ *M.C. Mehta vs. State of Tamil Nadu and Others* (1996) 6 SCC 756.

growth, and rising food and energy prices are some of the current labour situations in India.⁵⁹ The right to and at work needs to be addressed with more vigour in terms of policy-making relating to the economy and industry. ILO's role in India has benefited both sides with India serving as a role model for drafting an approach towards the realisation of labour rights in a developing country facing challenges relating to globalisation, a diverse workforce in the informal sector and a sensitive economy. Collaboration with India not only results in national level changes but also serves as blueprints for policies at international levels. Given the current labour and economic situation, more collaborative approaches identifying key areas and targeting major labour issues through legislations, policies, programmes, survey, monitored programmes and action plans will pave way for decent work with human dignity.

⁵⁹Human Rights in a Globalised World An Indian Diary Mukul Sharma Sage Publications 2010 Right to Work and Rights at Work Pg 185

INTELLECTUAL PROPERTY RIGHTS (IPR) LAWS IN INDIA: EVOLUTION, FRAMEWORK, AND CHALLENGES

- SASHANK KHANDELWAL⁶⁰

Abstract

Intellectual Property Rights (IPR) are a cornerstone of the modern knowledge economy, designed to protect the rights of creators, inventors, and innovators. In India, the landscape of IPR law has undergone substantial transformation over the past few decades, especially in the context of globalization and international trade agreements. This research paper explores the evolution of IPR laws in India, examines the current legal and institutional framework, evaluates enforcement challenges, and suggests reforms necessary for promoting innovation while ensuring equitable access to knowledge and technology.

1. Introduction

Intellectual Property Rights (IPR) refer to the legal protections granted to individuals and organizations for their creations of the mind. These include inventions, literary and artistic works, symbols, names, images, and designs used in commerce. The primary rationale for IPR is to provide creators and innovators with exclusive rights over their creations, thereby encouraging innovation, creativity, and economic development. In India, the development of IPR laws has been closely intertwined with its economic, technological, and social development. The post-liberalization period, particularly after India became a member of the World Trade Organization (WTO) in 1995, marked a significant turning point, compelling India to overhaul its IPR regime to comply with the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement.

2. Historical Evolution of IPR in India

India's tryst with intellectual property began during the colonial period. The earliest patent legislation in India can be traced back to the Indian Patents and Designs Act of 1911, which was largely modeled on British law. However, this early legislation did not adequately address the

⁶⁰ Advocate

needs of a developing country, where the emphasis was on access rather than exclusivity. After independence, the government initiated reforms to make the patent system more suited to national interests. The Patents Act of 1970 was a landmark piece of legislation that limited the scope of product patents, particularly in the pharmaceutical sector, in order to ensure affordable access to medicines. This approach was consistent with India's broader development goals.

The post-1995 period marked a shift in policy due to India's accession to the WTO and its obligations under the TRIPS Agreement. The TRIPS Agreement required member countries to provide minimum standards of protection for various categories of intellectual property, including patents, copyrights, trademarks, industrial designs, and geographical indications. India responded with a series of legislative amendments and new enactments, aimed at harmonizing its domestic laws with international standards while trying to safeguard public interest.

3. The Contemporary Legal Framework

India's current IPR legal framework is extensive and covers a wide range of intellectual property categories. The primary legislation governing patents is the **Patents Act, 1970**, which has been amended multiple times, notably in 1999, 2002, and 2005, to bring it into compliance with TRIPS. These amendments introduced key changes such as the recognition of product patents in pharmaceuticals and agrochemicals, which were previously restricted. The Act defines an invention as a new product or process involving an inventive step and capable of industrial application. Importantly, India retained safeguards like Section 3(d), which prevents patenting of incremental innovations unless they result in enhanced efficacy—an important measure to prevent “evergreening” by pharmaceutical companies.

Copyright in India is governed by the **Copyright Act of 1957**, which has been amended periodically, most significantly in 2012. The law protects original literary, dramatic, musical, and artistic works, cinematographic films, and sound recordings. The 2012 amendments were particularly aimed at addressing digital rights management and improving royalty mechanisms for authors and performers.

Trademarks are governed by the **Trade Marks Act, 1999**, which provides for the registration, protection, and enforcement of trademarks for goods and services. The Act allows for the

registration of collective marks, certification marks, and well-known trademarks, thus aligning with international practices. Similarly, industrial designs are protected under the **Designs Act, 2000**, which offers protection for the aesthetic appearance of articles. This law provides a term of protection of ten years, extendable by another five.

India also enacted the **Geographical Indications of Goods (Registration and Protection) Act, 1999**, which provides for the registration and protection of geographical indications (GIs). GIs are important for protecting traditional knowledge and local industries, with notable examples such as Darjeeling Tea, Basmati Rice, and Kanjeevaram Sarees.

In addition, India has separate legislation for the protection of semiconductor integrated circuit layout-designs under the **Semiconductor Integrated Circuits Layout-Design Act, 2000**, and for plant varieties and farmers' rights under the **Protection of Plant Varieties and Farmers' Rights Act, 2001**. The latter is a unique piece of legislation that balances the rights of breeders with those of farmers, recognizing their traditional knowledge and contributions to biodiversity.

4. Institutional Mechanisms and Administration

The implementation of IPR laws in India is supported by a range of administrative and quasi-judicial bodies. The **Office of the Controller General of Patents, Designs and Trade Marks (CGPDTM)** is the primary agency responsible for the registration and enforcement of patents, trademarks, and designs. The **Copyright Office** manages the registration and record of copyrights, while the **Geographical Indications Registry** oversees the registration of GIs. A dedicated **Plant Variety Registry** handles applications under the PPVFR Act.

In 2016, the Government of India adopted the **National IPR Policy**, which provided a comprehensive roadmap for the development of a strong IPR ecosystem. The policy aims to create awareness about IPR, strengthen the legal and administrative framework, facilitate commercialization of IP assets, and promote innovation. The establishment of the **Cell for IPR Promotion and Management (CIPAM)** under the Department for Promotion of Industry and Internal Trade (DPIIT) has been a key step toward achieving these goals. CIPAM plays a crucial role in conducting outreach, providing policy inputs, and supporting enforcement efforts.

5. Challenges in Enforcement and Implementation

Despite a comprehensive legal framework, the enforcement of IPR in India faces multiple challenges. One of the most persistent issues is the significant backlog and delays in the processing of patent and trademark applications. This can be attributed to understaffed patent offices and procedural inefficiencies. Although steps have been taken to expedite examination, the pace of disposal remains a concern for businesses and innovators.

Piracy and counterfeiting are rampant in sectors such as media, fashion, electronics, and pharmaceuticals. Digital piracy, in particular, has grown with the proliferation of online platforms. Although India has cyber laws and anti-piracy measures in place, enforcement remains inconsistent due to jurisdictional issues and limited technical expertise among law enforcement agencies.

Another major issue is the lack of awareness about intellectual property rights, especially among small and medium enterprises (SMEs), rural artisans, and academic institutions. Many innovators do not have access to the knowledge or resources required to protect their IP. Furthermore, judicial delays and inconsistent rulings contribute to the perception that IP litigation in India is uncertain and protracted.

6. Recent Developments and Policy Initiatives

In recent years, India has made strides toward improving its IPR regime. The digitization of IP filing and processing systems has improved transparency and reduced processing times to some extent. The government has introduced expedited examination for startups and female applicants to encourage innovation. Additionally, India has signed several bilateral agreements that include provisions for cooperation on IP, reflecting its growing commitment to international standards.

India's policy stance, however, remains uniquely balanced between IP protection and public interest. This is especially evident in the pharmaceutical sector, where India has used provisions such as **compulsory licensing** to ensure access to affordable medicines. The landmark Supreme Court judgment in **Novartis AG v. Union of India (2013)** upheld the rejection of a patent

application on the grounds that the new drug was not significantly more efficacious than an existing one. This case reaffirmed India's pro-public health stance and drew global attention to its unique approach to IPR in a developing country context.

7. The Way Forward

To create a truly innovation-driven economy, India must strengthen its IPR ecosystem in both legal and practical terms. This includes increasing the staffing and capacity of IP offices, training enforcement agencies and judiciary on technical aspects of IP law, and conducting large-scale awareness campaigns among grassroots innovators and SMEs. Universities and research institutions should be encouraged to establish dedicated IP cells and technology transfer offices. Additionally, reforms should focus on facilitating IP commercialization through public-private partnerships, startup incubation, and financial incentives for patent filing and licensing.

8. Conclusion

India's journey in building a robust IPR regime has been marked by a delicate balancing act between fostering innovation and protecting public interest. While significant progress has been made in aligning with international standards and strengthening institutional frameworks, challenges in enforcement, awareness, and commercialization remain. As India aspires to become a global hub of innovation and technology, a robust, inclusive, and forward-looking IPR policy will be indispensable. The emphasis must be not only on protecting intellectual property but also on democratizing its benefits to serve the broader goals of economic development and social welfare.

LEGAL PROTECTION FOR DOMESTIC WORKERS IN CHENNAI : A COMPREHENSIVE ANALYSIS

- DEESHA NAHAR.P⁶¹

A domestic worker is someone who undertakes housework (cooking, cleaning, washing clothes) for a single or multiple household for their living. They can be part-time or full-time workers and at times they also work as live-in domestic workers. It is reported that domestic workers constitute the third largest category of the workforce falling in line next to the agriculture and construction sectors of which women comprise 50% of the workforce. Urban areas are the most common places to hire domestic help, and this trend is rapidly increasing. The large influx of labour into domestic work is due to the minimal requirement of educational qualification or a skill. Hence, we can observe that domestic workers often tend to be illiterate or with minimal education and skill. The work characteristic includes denial of proper wage or any social security cover and neglect of other basic labour rights. In addition to this due to lack of unionisation or proper legislative cover, these workers are often left at the mercy of their employers. This paper aims to empirically probe into the socio-economic problems and challenges faced by domestic workers in Chennai region by particularly examining aspects such as wage, working hours and working conditions to provide a comprehensive view into their working experiences. This research will serve as a platform to implore into possible steps to address this labour issue on a broader discourse on labour rights and social justice.

Key words: Domestic worker, Labour Rights, Human Rights, Social Justice and Social Security

INTRODUCTION :

labourers who work in or for a private family or households are known as domestic labourers. They are important players in the care economy because they offer both direct and indirect care services. They may be responsible for housekeeping, cooking, laundry, ironing, gardening,

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watching after young children or ailing family members, driving the family vehicle, taking care of domestic pets, and defending the house. A domestic worker can be hired full-time, part-time, by a single family, through a service provider, or both. They can live in the employer's home as a live-in worker or in their own home as a live-out. A domestic worker may be referred to as a migrant domestic worker if they are employed in a nation other than their own. Twenty-five percent of the 75.6 million domestic workers globally are men, with 76.2 percent of them being women. For female employees, domestic labour is a more significant source of employment than for male employees.

Although they provide essential services, domestic workers rarely have access to rights and protection. Around 81 per cent are in informal employment – that's twice the share of informal employment among other employees. They also face some of the most strenuous working conditions. They earn 56 per cent of average monthly wages of other employees, and are more likely than other workers to work either very long or very short hours. They are also vulnerable to violence and harassment, and restrictions on freedom of movement. Informal domestic workers are particularly vulnerable. Informality in domestic work can partly be attributed to gaps in national labour and social security legislation, and partly to gaps in implementation.⁶²

Domestic workers are the largest unorganised working class in India.⁶³ Majority of them belongs to Schedule Caste, Schedule Tribe or Other Backward Community. Most of them fall under the category of women and children. Their nature of work varies from cooking, cleaning, washing, gardening, purchase of vegetables and consumer items. In many cases they are compelled to do agriculture and allied works also.⁶⁴ The absence of any specific study makes the ascertainment of the total number of domestic workers, difficult. However, a 1980 study conducted by the Catholic Bishops Conference of India (CBCI) found that in Kerala and Tamil Nadu 90 per cent of them were females; and in Delhi it was 45 per cent.

Problems faced by the domestic workers are innumerable: less wages, unlimited working hours, inadequate working atmosphere, low quality food, sexual exploitation, lack of medical care and social security are few in the umpteen issues. The domestic workers employed in the

⁶² <https://www.ilo.org/topics/domestic-workers/who-are-domestic-workers>

⁶³ Nicola C. Armacost, "Domestic Workers in India: A Case for Legislative Action" 36 (1) *JILI* 53-63 (1994)

⁶⁴ Tanuja Trivedi, *Domestic Women Workers*, (Jnanada Prakashan (P&D), New Delhi, 2009), p. 187

Gulf countries are the most vulnerable group. With no rights, most of them have become contemporary slaves. Employment of children as domestic workers is another serious issue.³ Many of them are trafficked and exploited by the placement agencies, which operate without any form of State regulations. In the last few decades there has been a tremendous growth in the demand for domestic workers. To meet this demand there has been a spurt of thousands of placement agencies providing domestic workers. However, a specific statute to regulate this unorganised sector is absent in India. The present article analyzes the international and national legal frame work governing domestic workers.

HYPOTHESIS:

“Domestic workers in the Chennai region face significant challenges, including low wages, long working hours, lack of legal protections, and exposure to various forms of abuse and exploitation. These challenges are exacerbated by factors such as gender, migration status, and socio-economic background, leading to adverse impacts on their overall well-being and quality of life.”

REVIEW OF LITERATURE :

Certainly! Here are five reviews of literature for your paper titled “Challenges Faced by Domestic Workers in India”:

Well-Being of Domestic Workers in India, This study highlights the demanding and undervalued nature of domestic work in India. It discusses the mental health issues faced by domestic workers, such as depression, anxiety, and suicidal tendencies, which are exacerbated by factors like intimate partner violence and financial burdens.

Informalized Workforce of Women Domestic Workers: Case of Bengaluru Metropolitan Region This research focuses on the socio-economic conditions of women domestic workers in Bengaluru, particularly during the COVID-19 pandemic. It examines the precarious nature of their employment, the impact of the pandemic on their livelihoods, and the power dynamics between workers and employers.

Dignity and Human Rights Violations at the Workplace: Intersectional Vulnerability of

Women Domestic Workers in India This article explores the intersectional vulnerabilities faced by women domestic workers, including low wages, informal work relations, unsafe working conditions, and lack of legal protection. It highlights issues such as physical and sexual violence, caste discrimination, and the absence of organizational platforms for advocating labor rights.

Challenges and Working Conditions of Women Domestic Workers, This overview addresses the various challenges faced by women domestic workers, such as sexual harassment, lack of formal contracts, low wages, and heavy workloads. It also discusses the mistreatment by employers and the additional burdens faced by workers from rural areas.

Recognition of the Rights of Domestic Workers in India, This chapter discusses the recognition of domestic workers' rights in India, focusing on the unregulated nature of the sector and the lack of policies to protect workers. It highlights the issues of underpayment, caste and religious discrimination, and non-recognition of skills.

OBJECTIVE OF THE STUDY :

1. To analyse the challenges and socio economic problems faced by domestic workers in Chennai region .
2. This study analyses on the laws and regulations formulated by State and National Government .

RESEARCH GAP :

The previous research paper were either secondary data or had data from pan India but this study focuses on the socio economic problems faced by workers in Chennai region only and it is based on primary data collected from the domestic workers.

RESEARCH METHODOLOGY :

This research employs a mixed-methods approach, integrating both primary and secondary data to provide a comprehensive analysis of the subject matter.

Primary data is collected through structured surveys and in-depth interviews with key

stakeholders, ensuring firsthand insights and up-to-date information. The primary data were collected from domestic workers in person interview through the authors and data was recorded in the google sheet by them based on the input given. The interview has semi structured questions and those were asked first to the respondents and the authors even had a conversation to understand the in-depth issues in the life of domestic workers.

Secondary data is sourced from existing literature, including academic journals, government reports, and industry publications, to contextualize and support the primary findings. The combination of these data sources enhances the robustness of the research, allowing for triangulation and validation of results. Data analysis involves both quantitative and qualitative techniques, ensuring a thorough examination of the research questions. This methodological approach ensures a holistic understanding of the topic, leveraging the strengths of both primary and secondary data.

LIMITATION OF THE STUDY :

This study is limited to the domestic workers of Chennai region alone and this data might not be feasible for pan India and there can be variations in the study .

WHO ARE DOMESTIC WORKERS :

The term ‘domestic worker’ is not susceptible to any precise definition. In India, the absence of a central statute governing them makes the attempts to define the term, difficult. Anyhow, the Domestic Workers (Welfare and Regulation of Employment) Bill, 2015 introduced in the Lok Sabha, defines "domestic worker" as “a person employed in a household for domestic work.”⁶⁵ The meaning given in the Bill is inadequate. The term “domestic work” is also defined vaguely as “all household chores, child care, personal care or any other job connected with household work.”⁶⁶ Though the Bill was introduced in 2015, so far it has not received the approval of the Parliament.

The International Labour Organisation (ILO) Convention on ‘Decent Work for Domestic Workers, 2011 defines the term “domestic worker” so as to include “any person engaged in

⁶⁵ Section 2 (a), The Domestic Workers (Welfare and Regulation of Employment) Bill, 2015

⁶⁶ *Ibid.* Section 2 (b)

domestic work within an employment relationship.”⁶⁷ The Convention has given wider amplitude and has more application. The definition covers all domestic work inside and outside the house and done in an employer – employee relationship. Hence, an office boy purchasing vegetables for his master can be considered as a domestic worker. The Convention also defined the word ‘domestic work’ as that “performed in or for a household or households.”⁶⁸ However, persons who perform domestic work occasionally or sporadically were excluded from the definition.⁶⁹

In 2017, the Ministry of Labour & Employment has taken steps for simplification, amalgamation and rationalization of Central Labour Laws and replacing them with four Labour Codes viz. Code on Wages, Code on Industrial Relations, Code on Social Security & Welfare, and Code on Occupational Safety, Health & Working Conditions. The Draft Labour Code on Social Security & Welfare defined the term “domestic worker”⁷⁰ as “a person who is employed for remuneration whether in cash or kind, in any house hold or similar establishments through any agency or directly, either on a temporary or contract basis or permanent, part time or full time to do the household or allied work and includes a replacement worker who is working for the main workers for a short and specific period of time as agreed with the main worker.” Explanation- household and allied work includes but is not limited to activities such as cooking or a part of it, washing clothes or utensils, cleaning or dusting of the house, driving, gardening, caring/nursing of the children/sick/old/mentally challenged or disabled persons. This is an exhaustive definition of domestic worker.

INTERNATIONAL CONVENTION BY ILO :

Domestic Workers Convention, 2011

In 2011, an overwhelming majority of 185 member States of the ILO voted in favour of adopting the Domestic Workers Convention No. 189. The Convention provides: (a) freedom of association and the effective recognition of the right to collective bargaining, (b) the elimination of all forms of forced or compulsory labour, (c) the effective abolition of child labour and (d) the

⁶⁷ Article 1 (b), ILO Convention on Decent Work for Domestic Workers, 2011

⁶⁸ *Ibid.* Article 1 (a)

⁶⁹ *Ibid.* Article 1 (c)

⁷⁰ Clause 2.39, Draft Labour Code on Social Security & Welfare, Ministry of Labour & Employment, Government of India, New Delhi, Dated 16th March 2017

elimination of discrimination in respect of employment and occupation.⁷¹ Member State shall take measures to ensure that domestic workers:- (a) are free to reach agreement with their employer or potential employer on whether to reside in the household, (b) who reside in the household are not obliged to remain in the household or with household members during periods of daily and weekly rest or annual leave and (c) are entitled to keep in their possession their travel and identity documents.⁷² This is the only document recognised by the member States for the protection of rights of the domestic workers. The provisions of the Universal Declaration of Human Rights (UDHR), 1948, International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966 etc have general application.

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1979:

The Convention empowers the member States to take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular: (a) The right to work as an inalienable right of all human beings; (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment; (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training; (d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work; (e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave; (f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.⁷³

Indian Constitutional and Statutory Frame Work:

⁷¹ Article 3, International Labour Organisation Convention on Domestic Workers, 2011

⁷² *Ibid*

⁷³ Article 11, Convention on the Elimination of All Forms of Discrimination against Women, 3 September 1981

Protection under Indian Constitution:

Constitution is the *grund norm* in every State. It protects the rights of the vulnerable sections of the society. In a report submitted by the Ministry of Women and Child Development, 40% of India's children have been declared to be vulnerable or experiencing difficult circumstances. They are entitled to special protection under Articles 14, 15, 17, 21, 23 and 24 of the Constitution.⁷⁴ Every person is entitled to equality before the law and equal protection of the laws;⁷⁵ and no person can be deprived of his life or personal liberty except according to procedure established by law.⁷⁶

Article 21 of the Constitution is the sum and substance of human rights of a person. In *Bandhua Mukti Morcha v. Union of India*⁷⁷ P.N Bhagwati, J. observed that “It is the fundamental right of everyone in this country, assured under the interpretation given to Article 21 by this Court in *Francis Mullin case* to live with human dignity, free from exploitation. This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly Clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity and no State, neither the Central Government nor any State Government, has the right to take any action which will deprive a person of the enjoyment of these basic essentials.”

The Directive Principles of State Policy under Part IV of the Constitution also impose State responsibility to secure:- (a) equal right to an adequate means of livelihood, (b) ownership and control of the material resources of the community are so distributed as best to sub serve the common good,(c) the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment, (d) equal pay for equal work for both

⁷⁴ *Bachpan Bachao v. Union of India* (2011) 177 DLT 198

⁷⁵ Article 14, the Constitution of India, 1950

⁷⁶ *Ibid*, Article 15, See also, *NHRC v. State of Arunachal Pradesh*; AIR 1996 SC 1234

⁷⁷ AIR 1984 SC 802

men and women, (e) health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength and (f) children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.⁷⁸

The Minimum Wages Act, 1948:

The purpose of the Act is to provide minimum rates of wages in certain employments. In *Bijay Cotton Mills Ltd. v. State of Ajmeer*,⁷⁹ the apex court held that ‘it can scarcely be disputed that securing of living wages to labourers which ensure not only bare physical subsistence but also the maintenance of health and decency is conducive to the general interest of the public. This is one of the Directive Principles of State Policy embodied in Article 43 of the Constitution. The workmen must get minimum wages and if the management cannot afford to do so, it has no right to exist.’⁸⁰

One of the central pillars for ensuring conditions of decent work for domestic workers in India has been the wage rates notified for domestic work. Despite the patchy coverage of domestic workers under various labour laws, in recent years, some State governments have notified minimum wages for domestic workers.⁸¹ The Supreme Court further held that while fixing the minimum wages, expenses for children, education, medical requirement, minimum recreation including festivals/ceremonies and provision for old age, marriage should constitute 25 per cent of the total minimum wage. The wage structure, which approximately answers the above components, is nothing more than a minimum wage at subsistence level. The employees are entitled to the minimum wage at all times and under all circumstances.²¹

Even if there is no statutory direction for the payment of fixed wages to the domestic workers, some State governments issued executive orders for payment of minimum wage to the domestic

⁷⁸ Article 39, Constitution of India, 1950

⁷⁹ 1955 ILLJ 129 SC

⁸⁰ *Rajamani Transports v. Their Workmen*, 1952 II LLJ 785 (LAT)

⁸¹ Kamala Sankaran, “Domestic Work, Unpaid Work and Wage Rates” 48 (43) *EPW* 85-89 (2013)

workers. These orders are neither based on any study nor considering index of living conditions of the workers. The Labour and Skill (E) Department, Government of Kerala has directed to pay Rupees 5070 as monthly minimum wage for the domestic works.⁸²

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013:

Domestic servants are often excluded from labour laws which mean they are not entitled to the same rights as other workers.⁸³ Sexual harassment against domestic workers is a nightmare prevalent in the domestic worker scenario. House owner, his wife, children, friends, relatives, and neighbours are always a threat to the domestic workers. In *Vishaka v. State of Rajasthan*⁸⁴ the Supreme Court issued certain guidelines for the protection of women employees at work place. The Sexual Harassment Act, 2013 protects women against ‘sexual harassment’ at ‘workplace.’ It declares that, ‘no woman shall be subjected to sexual harassment at any workplace.’⁸⁵ The following circumstances, among other circumstances, if it occurs or is present in relation to or connected with any act or behaviour of sexual harassment may amount to sexual harassment: (i) implied or explicit promise of preferential treatment in her employment; or (ii) implied or explicit threat of detrimental treatment in her employment; or (iii) implied or explicit threat about her present or future employment status; or (iv) interference with her work or creating an intimidating or offensive or hostile work environment for her; or (v) humiliating treatment likely to affect her health or safety.⁸⁶

The term “workplace” includes *inter alia*, “a dwelling place or a house;”⁸⁷ and “sexual harassment” includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely:

- (i) Physical contact and advances; or
- (ii) A demand or request for sexual favours; or

⁸² *The Workmen of Reptakus Brett Co. v. Reptakus Brett Co Ltd*, AIR 1992 SC 504

⁸³ G.O (P) No.202/2016 LBR, dtd. 29 Dec 2016, Labour and Skill (E) Department of Government of Kerala

⁸⁴ AIR 1997 SC 3011

⁸⁵ Section 3 (1), the Sexual Harassment Act, 2013

⁸⁶ *Ibid.*, Section 3 (2)

⁸⁷ *Ibid.*, Section 2 (o)

- (iii) Making sexually coloured remarks; or
- (iv) Showing pornography; or
- (v) Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.⁸⁸

Any aggrieved woman can make a complaint against the respondent.⁸⁹“Aggrieved woman” means: (i) in relation to a workplace, a woman, of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment by the respondent; and (ii) in relation to a dwelling place or house, a woman of any age who is employed in such a dwelling place or house.⁹⁰

Employees’ State Insurance Act, 1948:

In many situations illiterate domestic workers are forced to work in a pathetic situation in connection with the health, safety and security of the worker. Presently, except under vague tortuous law principles, no special statutory obligations have been imposed upon any person to protect the health and safety of the domestic workers. Even though the Employees State Insurance (ESI) Act, 1948 was enacted mainly against employees in the industry and other business organisations, it is advisable to apply it to domestic workers also. The object of the Act is to provide for certain benefits to employees in case of sickness, maternity and ‘employment injury’ and to make provision for certain other matters in relation thereto.

In *P. Asokan v. Western India Plywoods Ltd* ⁹¹ Sukumaran, J. beautifully explained the importance of E.S.I Act as “Law had no difficulty in projecting an equity aspect, in imposing a burden on the master and relieving the hardship of the servant, who was at any rate in those days, an underdog, with unlimited disabilities and difficulties. Even when the servant was guilty of a tort, the master also was saddled with the responsibility to meet the claim of the victims of the servant's negligence. The theory of vicarious liability was evolved and developed over the

⁸⁸ *Ibid.*, Section 2 (n)

⁸⁹ “Respondent” means a person against whom the aggrieved woman has made a complaint. (Section 2 (m))

⁹⁰ *Ibid.*, Section 2 (a)

⁹¹ ZIR 1987 Ker 103

years.”

Unorganised Workers’ Social Security Act, 2008:

There are many unorganised sectors of working class in the length and breadth of India. Workers associated with agriculture, farming, weaving, fishing, house hold works, painting, art, mason, carpenter, black smith, gold smith are the major unorganised working class in India. There is a special statute for protecting the rights of the above class. This Act provides for the social security and welfare of unorganised workers. The Act defines “home-based worker” as a person engaged in the production of goods or services for an employer in his or her home or other premises of his or her choice other than the workplace of the employer, for remuneration, irrespective of whether or not the employer provides the equipment, materials or other inputs.⁹² Similarly “self-employed worker” means any person who is not employed by an employer, but engages himself or herself in any occupation in the unorganised sector subject to a monthly earning of an amount as may be notified by the Central Government or the State Government from time to time or holds cultivable land subject to such ceiling as may be notified by the State Government.⁹³

The Act defines “unorganised sector” as an enterprise owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers is less than ten.⁹⁴ And “unorganised worker” means a home-based worker, self-employed worker or a wage worker in the unorganised sector and includes a worker in the organised sector who is not covered by any of the Acts mentioned in Schedule II to this Act.⁹⁵ The Act contains provision for National Social Security Board⁹⁶ and State Social Security Board⁹⁷ for the effective implementation of the provisions of the Act.

In a recent decision in 2018- *Shramjeevi Mahila Samiti v. State of NCT of Delhi*-⁹⁸ the

⁹² Section 2 (b), The Unorganised Workers’ Social Security Act, 2008

⁹³ *Ibid.*, Section 2 (k)

⁹⁴ *Ibid.*, Section 2 (l)

⁹⁵ *Ibid.*, Section 2 (m)

⁹⁶ *Ibid.*, Section 5

⁹⁷ *Ibid.*, Section 6

⁹⁸ Special Leave to Appeal I (Criminal) No. 150/2012

Supreme Court directed the Centre not to disburse any grants to the States which have not registered domestic workers under the Unorganised Workers Social Security Act. The directions to the Centre came on a petition filed by an NGO which had told the court that despite the Act coming into force in 2008 and framing of several schemes, no domestic worker has enjoyed their benefits.⁹⁹

Domestic Workers Welfare and Social Security Act, 2010¹⁰⁰

It is a proposed legislation aimed at improving the working conditions and welfare of domestic workers in India. This act seeks to ensure fair wages, regulate working hours, and provide social security benefits such as health insurance, maternity benefits, and pensions. It also aims to protect domestic workers from exploitation and abuse by recognizing their rights and providing a legal framework for their protection. By addressing these critical issues, the act strives to uplift the status of domestic workers and integrate them into the formal labor market, ensuring they receive the dignity and respect they deserve.

The Child Labour (Prohibitions & Regulation) Act, 1986:

More than one-third of the country's population, around 440 million is below 18 years. Resources must be invested in children proportionate to their huge population.¹⁰¹ However, they are widely used for bonded labour, domestic work, restaurants, agricultural labour, construction activity, carpet industry, garment industry, fish/shrimp export and other work in the formal and informal economy. The Child Labour (Prohibitions & Regulation) Act was enacted to ban employment of children below 14 years and to regulate the conditions of work of children in employments where they are not prohibited and also to lay down enhanced penalties for employment of children. The Act provides total ban for works described in part A and B of the Schedule.¹⁰² The Act contains provision for hours and period of work¹⁰³ and weekly holidays.¹⁰⁴

⁹⁹ The apex court had on March 24, 2017, directed the Centre to constitute a National Social Security Board as per the provisions of the Unorganised Workers' Social Security Act, enacted in the year 2008. The Centre had set up the board on May 22, 2017 See, *National Domestic Workers Welfare Trust v. The State of Jharkhand* (2014) 1 AIR Jhar R 249

¹⁰⁰ Domestic workers Welfare and Social Security Act 2010

¹⁰¹ *Bachpan Bachao Andolan v. Union of India*, (2011) 177 DLT 198

¹⁰² Section 3, Child labour in domestic work under Child Labour (Prohibitions & Regulation) Act, 1986

TAMIL NADU GOVERNMENT INITIATIVES :

The Tamil Nadu government has taken several initiatives to protect domestic workers, including:

1. Legal recognition: In 1999, domestic workers were included in the Tamil Nadu Manual Labour Act, which was the first time domestic workers were legally recognized in India.¹⁰⁵
2. Child labor ban: In 2006, child labor in domestic work was banned.
3. Domestic Workers Welfare Board: In 2007, the Tamil Nadu Domestic Workers Welfare Board was established.¹⁰⁶
4. Minimum wage: In 2007, domestic workers were brought under the Minimum Wage Act. The minimum wage was increased in 2018.¹⁰⁷
5. Retired DGPs hiring domestic workers: In January 2024, the Home Secretary issued an order allowing retired Directors-General of Police (DGPs) to hire domestic workers at a monthly salary of ₹10,000.¹⁰⁸

NATIONAL POLICY FOR DOMESTIC WORKERS :

The National Policy for Domestic Workers is a proposed framework aimed at recognizing and protecting the rights of domestic workers in India. This policy seeks to include domestic workers in existing labor laws, ensuring they receive fair wages, regulated working hours, and social security benefits such as health insurance and pensions. It also aims to safeguard them from abuse and exploitation by establishing mechanisms for grievance redressal and legal protection. By formalizing the employment of domestic workers, the policy strives to improve their working conditions, provide them with dignity and respect, and integrate them into the formal labor

¹⁰³ *Ibid.*, Section 7

¹⁰⁴ *Ibid.*, Section 8

¹⁰⁵ <https://idwfed.org/publications/social-protection/domestic-workers-and-social-protection-in-tamil-nadu-chennai/#:~:text=The%20state%20has%20a%20more,lack%20access%20to%20social%20protection.>

¹⁰⁶ [https://tnlegalservices.tn.gov.in/welfare_schemes_GOs/12.%20No.II\(2\)%20LE%20515%20\(d-4\)%2020008.pdf](https://tnlegalservices.tn.gov.in/welfare_schemes_GOs/12.%20No.II(2)%20LE%20515%20(d-4)%2020008.pdf)

¹⁰⁷ <https://apwld.org/wp-content/uploads/2021/09/PTS-FPAR-Briefer-15-09-21.pdf>

¹⁰⁸ <https://www.thehindu.com/news/national/tamil-nadu/now-retired-dgps-too-can-hire-domestic-workers-at-states-expense/article67867512.ece>

market. This initiative reflects a significant step towards acknowledging the vital contributions of domestic workers to the economy and society. It is still in the drafting stage and under process.

TAMIL NADU SCHEMES:

The Tamil Nadu government has implemented several schemes to support domestic workers. Here are some key initiatives:

Domestic Workers Welfare Board: This board provides various benefits to registered domestic workers, including financial assistance for marriage, maternity benefits, and educational support for their children¹⁰⁹.

Pension Scheme: Domestic workers aged 58 and above are entitled to a monthly pension of ₹1,000².

Accidental Death Benefit: In case of accidental death, the worker's family receives ₹1 lakh, along with an additional ₹5,000 for funeral expenses¹¹⁰.

Marriage Assistance: The board provides ₹5,000 for women workers and ₹3,000 for men workers for marriage expenses.

Maternity Benefits: Female domestic workers can avail maternity benefits, although awareness and access to this benefit are still limited¹¹¹.

Educational Support: Financial assistance is provided for the education of domestic workers' children¹¹².

To avail these benefits, domestic workers need to register with the respective district Labour Welfare Board, providing necessary documents like ration card, Aadhaar card, bank passbook, and passport-sized photos.

DATA ANALYSIS AND INTERPRETATION :

¹⁰⁹ TAMIL NADU DOMESTIC WORKERS SOCIAL SECURITY AND WELFARE SCHEME 2007.

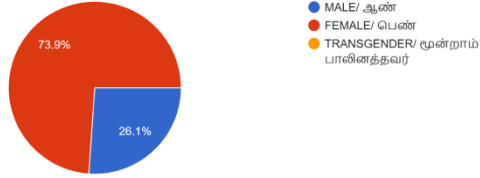
¹¹⁰ <https://citizenmatters.in/government-schemes-and-other-benefits-for-domestic-workers-tamil-nadu/>

¹¹¹ <https://www.wiego.org/sites/default/files/publications/file/WIEGO%20Policy%20Brief%20N23%20Tamil%20Nadu%20for%20web.pdf>

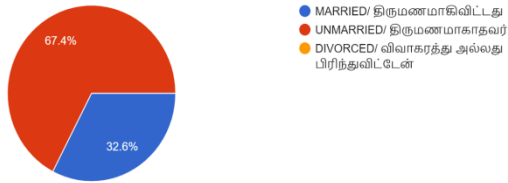
¹¹² <https://citizenmatters.in/government-schemes-and-other-benefits-for-domestic-workers-tamil-na>

DEMOGRAPHIC FEATURES

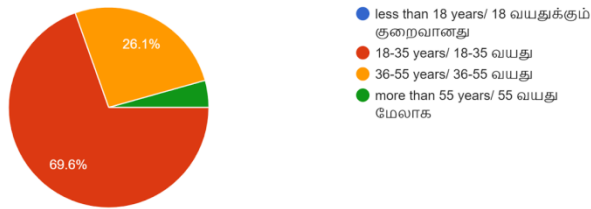
GENDER/ பாலினம்
46 responses



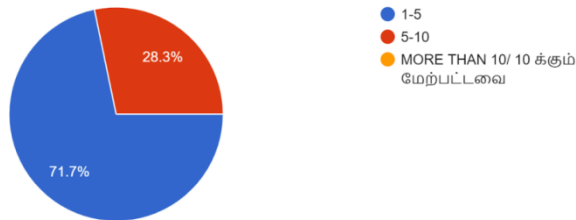
MARITAL STATUS / திருமண நிலை
46 responses

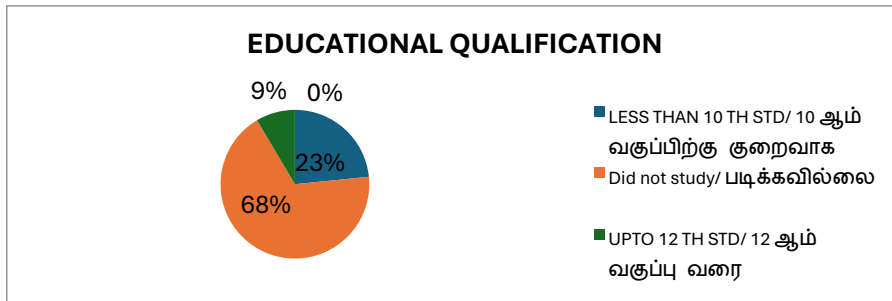


AGE/ வயது
46 responses



NO OF MEMBERS IN FAMILY / குடும்ப உறுப்பினர்களின் எண்ணிக்கை
46 responses

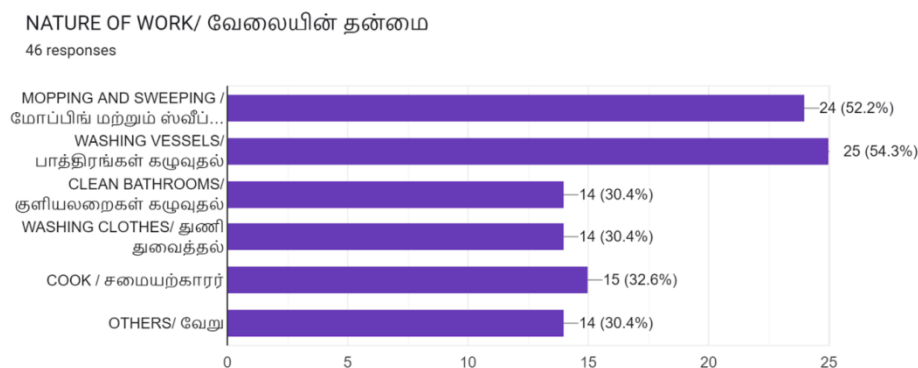




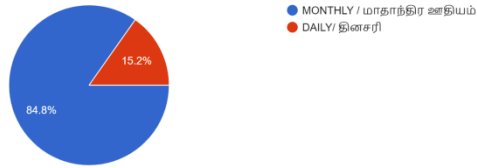
INTERPRETATION FOR DEMOGRAPHIC FEATURES :

The above data shows that over 73.9% of the domestic workers are females and only less than 25% of them are male workers . This shows that women workers are more participated in the domestic places and are more prone to exploitation. Over 65% of the respondents are unmarried and this means the young population is more into domestic work .Majority of the workers are from the age group of 18-35 years and the reason is because at young age they are in need to over and they are willing to do any work which they get because there is lack of experience in work . In spite of being in young age most of them are uneducated and this is the reason because they might not have access to educational programs and this leads to lack of basic awareness in right so they are more prone to exploitation . The number of family members is between 1-5 people per respondent so this shows they might be forced to work to support their families and their might be poverty and financial problems .

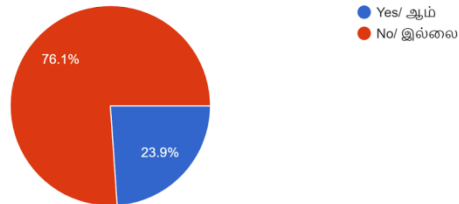
WORKING PLACE QUESTIONS :



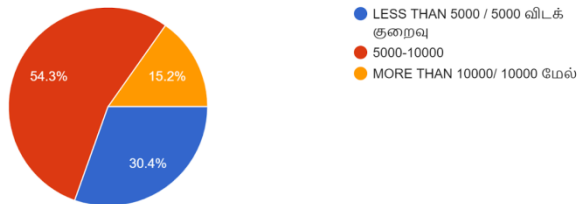
WAGES ARE BASED ON / ஊதியம்
46 responses



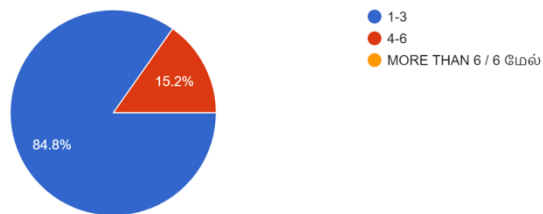
DO YOU STAY AT YOUR WORK PLACE ? / உங்க வேலைய இடத்துல நீங்கள்
வசிக்கிறீர்களா?
46 responses



MONTHLY SALARY PER HOUSEHOLD / மாத சம்பளம் ஒரு வீட்டுக்கு
46 responses



NO OF PLACE YOU WORK IN / நீங்கள் பணிபுரியும் இடங்களின் எண்ணிக்கை
46 responses



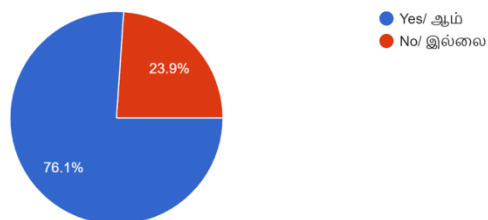
INTERPREATION FOR WORKPLACE RELATED QUESTIONS :

The data collected from the above respondents shows that most of them do combined

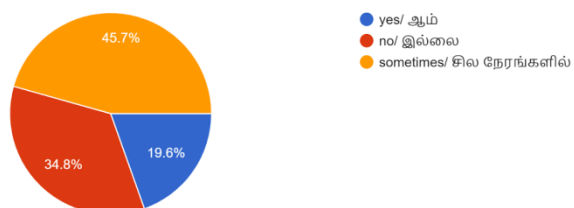
activities of mopping , sweeping and washing vessels and some also clean bathrooms and clothes also . But it can be analysed that the nature of the work is very subjective and changes from household to household and needs of the employer also . 85% of the workers get the wages based on the month and this shows they are not shifting in nature and atleast work for a month to get wage . The times of the workers states over 39% say its for 1-3 hours and 32% says its for fully day hence we can interpret that they work for a minimum of 4 hours ae day to earn and this is fully physical labour work which they do hence they might get tired and exhausted also over the day. Over 76% of the workers state that they don't say in worker place that means they live with their families and have a shelter to stay near the workplace within city limits . 85% of the workers state they work in 1-3 household . This is shocking to know that over 56% of the workers only earn 5000-10000 rupees pr month insipte fpr working in 1-3 households and working for minimum of 5 hours are day , this shows they are underpaid and exploited by the employers because of lack of education and awareness in them .

WAGED REALTED QUESTIONS :

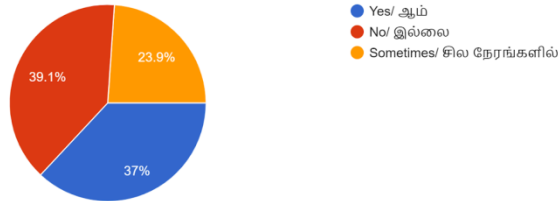
DO YOU RECEIVE WAGE ON TIME ?/ சரியான நேரத்தில் சம்பளம் கிடைக்கிறதா?
46 responses



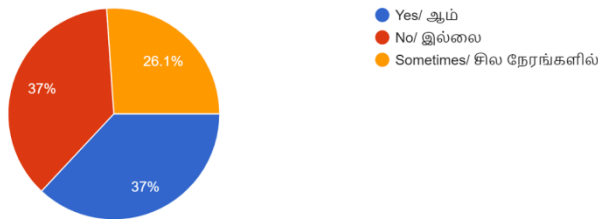
DO YOU GET ANY BONUS ?/ ஏதாவது போனஸ் கிடைக்குமா?
46 responses



DO GET WAGE CUT WHEN YOU ARE SICK AND UNABLE TO GO TO WORK ?/ உடல்நிலை
சரியில்லாமல் வேலைக்கு செல்ல முடியாம...ம் போது சம்பள குறைப்பு கிடைக்குமா?
46 responses



DO YOU GET EXTRA PAY WHEN YOU DO EXTRA WORK / நீங்கள் கூடுதல் வேலை
செய்யும்போது கூடுதல் ஊதியம் கிடைக்குமா
46 responses

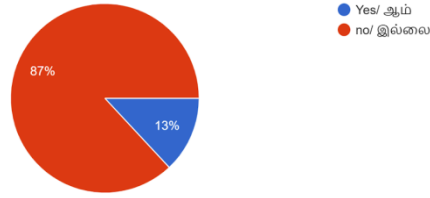


INTERPREATION FOR WAGE RELATED QUESTION :

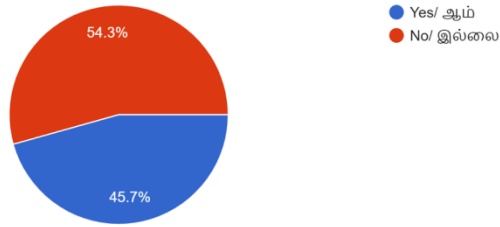
From the above data it can be interpreted that over 76% of the workers receive their wages on time and this shows the employers are giving them wage on time . Over 45% of the workers get bonus sometimes from the workers and this shows not all the time they are given bonus in festivals times . The bonus ids usually old clothes and used stuff and very rarely money they get which is an exploitation and they do have the right to get bonus and increment in workplace . Over 40% of the workers state that they get a wage cut if they don't go to work which is not fully fair on the path of the employer and sometimes they must consider the reason of the holiday and give a paid leave of a minimum of 3 days in a month so they can take care of their life and family or any medical emergency also. Most of the workers state that they don't get extra paid for the extra work they do and this is merely an exploitayion and the hardwork is not paid and this is they reason by the workers are never able to improve their living and few of them get paid but which is less than 200 rupees which is not a fare wage given to them .

TREATMENT IN WORKPLACE :

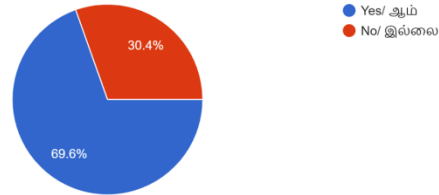
DID YOU FACE ANY HARASMENT AT YOUR WORK ?/ நீங்கள் ஏதேனும் துன்புறுத்தலை எதிர்கொண்டீர்களா வேலையில்?
46 responses



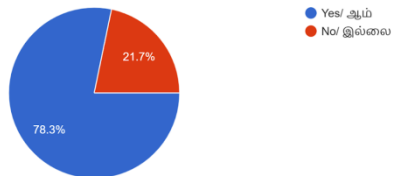
DID YOU FEEL DISCRIMINATED AT YOUR WORK PALCE ?/ உங்கள் பணியில் பாரபட்சமாக உணர்ந்தீர்களா?
46 responses



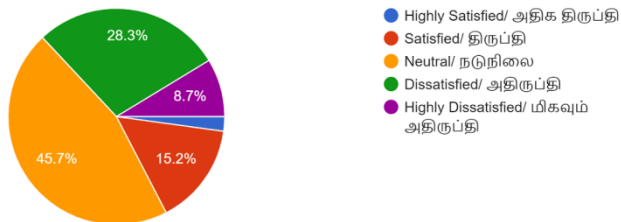
DO YOU FEEL UNDERPAID FOR YOUR WORK / உங்கள் வேலைக்கு குறைவான ஊதியம் வழங்கப்படுவதாக உணர்கிறீர்களா?
46 responses



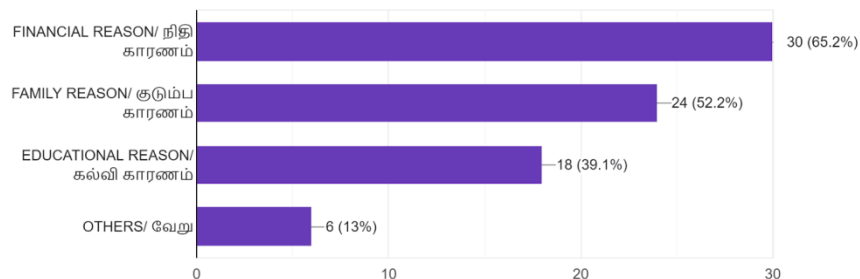
ARE YOU GIVEN FOOD AND WATER AT WORK ?/ உணவும் தண்ணீரும் தரப்படுகிறதா வேலையில் ?
46 responses



ARE YOU SATISFIED WITH THE WAGE ? / ஊதியத்தில் நீங்கள் திருப்தி அடைகிறீர்களா?
46 responses



What made you do this work ?/ ஏன் இந்த வேலையை செய்கிறீர்கள்
46 responses



INTERPRETATION OF THE TREATMENT OF WORKERS:

The study shows that over 87% of the workers not face harassment in their workplace and few of them do fell by the way of disrespectful behavior and seeing them in a bad way which made them feel uncomfortable in workplace . The biggest concer here is that 60% of the workers felt discriminated in their workplace and this is a big concern in this modern 21 st century where still there is this practice followed . The employers make them feel like untouchable, see them differently, treat them differently , don't allow to temple and their kitchens , have separate plates and show them disrespectful behavior to them and make them feel underconfident and lower their self esteem .

Over 65% of the workers feel they are underpaid and over 79% of the workers get water and food in work place but still its leftover and old food only . Most of the workers are not satisfied with their wage and treatment and this shows an area of concern for he government and thy need to make laws for minimum wages of workers to give them respect and fair social justice. Over 60% of workers are forced to work because of family conditions and financial reasons and they

are forced to work and abide by the rules of the employer .

Most of the workers are not availing any scheme of the government because there is lack of awareness and they are not well verse with the procedures and formalities of the schemes.

REFERENCES:

1. The study suggests well-being initiatives and mental health programs to improve the quality of life for domestic workers.
2. The study underscores the need for better working conditions and legal protections for domestic workers
3. The study calls for better legal frameworks and welfare provisions to protect domestic workers.
4. The study suggests capacity building and proactive roles for civil society organizations to ensure the rights of domestic workers.
5. The study emphasizes the need for mental health programs and well-being initiatives to support domestic workers.

GENDERED WORKPLACE PRESSURES: EXAMINING THE HIGHER EXPECTATIONS AND STRESS ON MALE WORKERS COMPARED TO FEMALE WORKERS

- DIVYA KIRUBA M¹¹³

Introduction

In modern workplaces, gender equality is often perceived as being achieved through inclusive policies and equal representation. However, beneath this progressive exterior, there are subtle and deep-rooted pressures, especially faced by male workers, that remain underexplored. These pressures are not only rooted in historical and societal expectations but also reflect the ongoing evolution of gender roles in professional settings.

While workplace stress is a universal issue, the expectations placed on male employees to consistently perform, provide, and suppress emotional vulnerabilities often go unacknowledged. Unlike women, who are generally offered flexibility due to family or caregiving responsibilities, men are typically expected to remain unwavering in commitment and endurance, regardless of personal circumstances. This silent burden can lead to chronic stress, mental health challenges, and a toxic work environment where expressing vulnerability is seen as a weakness.

The focus of this paper is to analyze the comparative workplace pressures between male and female employees, emphasizing the double burden men face under the guise of masculinity and performance. The study relies on secondary data to examine patterns, policies, and narratives surrounding gendered expectations in the professional sphere.

Objectives

1. To understand gender-specific workplace pressures in professional environments.
2. To examine societal expectations contributing to male worker stress.
3. To explore how workplace policies reflect gendered assumptions.

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4. To identify gaps in emotional and mental health support for male employees.
5. To provide suggestions for creating a more balanced and empathetic work environment for all genders.

Research Methodology

This study adopts a **qualitative research design**, relying on **secondary data** sourced from existing academic journals, government reports, organizational studies, and published articles from reputable sources such as the ILO, WHO, and NCBI. The methodology includes comparative analysis of gendered workplace pressures using psychological studies, HR records, and sociological data.

Key tools used for analysis include thematic coding and content comparison. Literature that discusses mental health, gender stereotypes, productivity pressure, and workplace culture has been critically examined to formulate the arguments presented in this paper.

Review of Literature

1. **Connell, R.W. (2005)** – In his work on *Masculinities*, Connell highlights the performance pressure men face to conform to the "hegemonic masculinity" ideal in workplaces, where weakness or stress is perceived as unmanly.
2. **Kimmel, Michael (2010)** – Kimmel argues that while women face discrimination, men face invisibilized pressure to continuously provide and succeed, which contributes to mental burnout.
3. **Williams, Joan (2000)** – She notes in *Unbending Gender* that men are often not granted leeway for work-life balance because workplace structures assume that men have no caregiving responsibilities.
4. **Gorman, Elizabeth H. (2005)** – Her research illustrates how male professionals are less likely to seek workplace accommodations due to societal expectations and the stigma around vulnerability.

5. **Hochschild, Arlie Russell (1983)** – In *The Managed Heart*, Hochschild reveals how emotional labor is unfairly expected to be invisible in men, forcing emotional suppression and leading to stress-related illnesses.

6. **Lewis, Suzan (2001)** – Her studies show that women are allowed to negotiate flexible schedules due to family responsibilities, while men who seek the same are often mocked or penalized.

7. **Brescoll, Victoria L. (2016)** – Brescoll found that male workers expressing emotions are often seen as less competent, contributing to internalized emotional restraint.

8. **Eagly, Alice H., & Carli, Linda L. (2007)** – Their research shows that while women face a "glass ceiling," men encounter a "glass box" – trapped in roles of authority and pressure with limited emotional outlets.

Research Gap

While ample research has been conducted on the challenges women face in the workplace, there remains a noticeable gap in literature addressing the silent pressures experienced by men. Women, when facing work stress, often cite reasons rooted in family obligations, childcare, or emotional strain — reasons that society acknowledges and accommodates. However, when men seek similar understanding, their concerns are often ridiculed, ignored, or deemed as weakness. This disparity leads to unacknowledged stress and contributes to issues such as burnout, depression, and even suicide among working men. This paper seeks to fill this critical research void by emphasizing that workplace equality must also mean acknowledging male vulnerabilities.

Discussion

Workplace expectations, although assumed to be gender-neutral, operate within a cultural framework where men are presumed to be the stable, stoic breadwinners. Male workers are often discouraged from discussing emotional fatigue, and instead are socially conditioned to "man up" and suppress stress. This leads to a form of silent suffering that is rarely addressed in employee

wellness programs.

Additionally, the cultural perception of masculinity in professional environments fosters a competitive and isolated work culture. Male employees may fear taking paternity leave, requesting mental health breaks, or even discussing burnout, as it may be interpreted as weakness or lack of ambition.

Moreover, in many professional environments, performance expectations for men are unforgiving. The idea that failure is not an option continues to pressure male workers to overwork, often at the expense of their health. When compared to women, whose family-related pressures are understood and sometimes accommodated, men face a cruel irony — being expected to be emotionally detached and ever-present in the workplace.

Suggestions

1. **Policy Reforms:** Workplaces should develop gender-sensitive policies that include mental health leave, flexible hours, and emotional support systems for all genders.
2. **Awareness Campaigns:** Conduct awareness programs that debunk toxic masculinity and normalize help-seeking behavior among male employees.
3. **Leadership Training:** Train HR and leadership teams to recognize unconscious gender bias in performance evaluations and expectations.
4. **Safe Spaces:** Create forums where male workers can anonymously or openly discuss stress and mental health without stigma.

Conclusion

This study attempts to shed light on the often-overlooked experiences of male employees in professional environments. While strides have been made to accommodate the unique challenges faced by women, we must not forget that men too are burdened by silent societal expectations.

These pressures are often internalized, leading to emotional and psychological distress.

True workplace equality will be realized only when all genders are treated not just equally, but equitably — with understanding for their unique challenges. It is time for policymakers, employers, and researchers to recognize that emotional well-being is not a gendered issue but a human one. By acknowledging and addressing the hidden burdens on men, we move one step closer to truly inclusive and compassionate workspaces.

AN ANALYSIS OF THE UNORGANISED WORKERS SOCIAL SECURITY ACT

- DONNA GADIEL¹¹⁴ & SURYA SIVAKUMAR¹¹⁵

I. Abstract

India has a large proportion of working and non-working poor people who are exposed to various deprivations and thus suffer from social insecurity. They tend to be outside the scope of social protection strategies and remain susceptible to a host of risks and uncertainties. According to a number of reports, including those of the International Labour Organization, the percentage of informal workers who are not under social security is shockingly high, at 80-90% in South Asia. The informal economy, where most of the workers in these nations are employed, raises a number of issues for the workers because of its uncertain working environment and absence of formal entitlements. Most of the informal sector workers work long hours for low wages and lack access to social protection coverage. This absence of social security subjects them to economic hardship and vulnerability, particularly during times of crisis. Extending social support and enhancing the quality of jobs among workers is one of the key challenges to be met by Asian nations. Regional countries like Bangladesh, Indonesia, Japan, Korea, Malaysia, Pakistan, Singapore, and Vietnam have been adopting a number of policies to deal with the problem of social insecurity of unorganized workers.

Keywords: *Informal Economy, Social Security, Economic Vulnerability, Policy Interventions*

II. Introduction

The diligent increment of unorganized work drive has ended up as a common highlight of world economy over recent years. Among the overall utilized populace of the world, 61.2% representatives work in unorganized divisions (Panner et al, 2019). It is found that developed nations having high income level depends less on casual or unorganized segment, whereas low-

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and middle-income countries depend heavily on it.

As per the ILO Report 2018, Africa accounts for the highest proportion of workers in the informal economy at 85.8%, followed by emerging and developing nations (69.6%), Arab states (68.6%), Asia and the Pacific (68.2%), the Americas (40%), Europe and Central Asia (25.1%), and developed countries (18.3%) (Panner et al., 2019). India is also not an exception to this trend with over 75% of its working population found in the informal or unorganized sector (ILO, 2018). The Ministry of Labour, Government of India, has classified the unorganized sector into four categories based on occupation, nature of business, most vulnerable categories, and service-related activities.

Firstly, occupation-based unorganized workers include those involved in rural activities such as small, marginal, and landless farmers, agricultural labourers, sharecroppers, fishers, and beedi rolling, labeling, packing, animal husbandry, construction, leatherwork, salt production, brick kilns, sawmills, oil mills, weaving, masonry, and stone quarrying.

Secondly, unorganized workers on the basis of type of employment consist of agricultural labourers, bonded labourers, migrant labourers, contract labourers, and casual labourers. Thirdly, the unorganized vulnerable workers include the tappers of resin, scavengers, head-load carriers, animal cart drivers, and the people engaged in loading/unloading. Finally, service-category unorganized workers are midwives, home-based workers, fishers, women workers, barbers, vendors of vegetables and fruits, and newspaper vendors (Diwaker & Ahamad, 2014).

In addition to these categories, other groups also fall under the unorganized labour sector, including, (i) Home-based activities such as spice making, food processing, poultry farming, and dairy keeping; (ii) Small-scale domestic production requiring minimal skills, including handloom weavers, craft artisans, sericulture workers, carpenters, and female tailors; (iii) Retail trade and services, including tannery workers, cobblers, street vendors, vegetable sellers, rickshaw pullers, auto drivers, second-hand clothing traders, laundry workers, and domestic helpers (Sundar, 1983).

The National Commission on Labour (1969) noted that defining unorganized labour is challenging. However, it can be conceptualized as workers who are unable to organize for

collective goals due to certain constraints such as the informal and irregular nature of employment, lack of awareness and education, marginal and small-scale establishments with low capital investment per worker, geographically dispersed workplaces, and the dominant role of individual employers operating independently or in small groups.

The Unorganized Workers' Social Security Act, 2008 defines unorganized workers as home-based workers, self-employed individuals, or wage labourers in the unorganized sector. It also includes workers in the organized sector who are not covered by any other Acts listed in Schedule II of the Act. The National Commission for Enterprises in the Unorganized Sector (NCEUS, 2009) defines unorganized workers as individuals who work in the unorganized sector or households, except regular workers who get social security benefits from employers. It further encompasses workers in the formal sector who are not given employment or social security benefits by their employers.

III. Objectives Of The Study

The paper is designed to meet the following objectives:

- 1) To highlight the different problems faced by unorganized workers in India.
- 2) To review the various social security measures undertaken for unorganized workers in India.

IV. Methodology

So far the methodology of this paper is concerned, the descriptive cum analytical method is followed. The study is mainly based on the secondary sources of data collection including published and unpublished sources. The reliable data and information have been collected from the literature material available in the form of books, research articles, journals, government reports and government websites to address the research objectives of the study.

V. Analysis

Unorganized workers are very important in the Indian economy. The National Commission on Entrepreneurship in the Unorganized Sector (2008) states that unorganized workers comprised 92% of India's total workforce, with 457 million workers in 2004-05. The National Commission

for Enterprises in the Unorganized Sector (NCEUS) also stated that unorganized workers contributed 50% to the Gross Domestic Product (GDP) (Nikita & Tauffiqu, 2014).

The National Sample Survey Organization (NSSO) report (2011-12) projected that 46.5 crore people were employed in India. 43.7 crore were employed in the unorganized sector, constituting 94% of the total labour force, and just 2.8 crore were working in the organized sector, which comprised only 6% of the labour force (Venkatashami & Harish, 2015).

This information reflects a persistent rise in unorganized workers over the years. The increasing level of workers in the unorganized sector indicates a failure to create employment opportunities in the formal sector. The NSSO Report (2011) also observed that from 2004-05 to 2009-10, there was a steep fall in regular employees and an increase in seasonal and unorganized workers, as opposed to the years 1999-2000 to 2004-05 (Kalyani, 2016).

VI. Challenges Faced By The Unorganised Sector

The increase in the labour force in the unorganized sector has emerged as a characteristic aspect of the Indian economy. Unorganized workers exist in rural as well as urban areas, and indeed they hold sway over the Indian labour market. Though they contribute heavily to the economy, they are subjected to various issues that hamper their economic and social welfare.

Low wages are one of the most serious problems confronting unorganized workers. They earn the lowest wages in society, frequently without the advantages of equal pay for equal work. They are deprived of incentives, allowances, bonuses, and other social benefits, exposing them to exploitation, discrimination, and injustice in their workplaces. Because they lack formal employment structures, their economic security is tenuous, rendering them extremely vulnerable to economic hardship.

In addition, unorganized workers are mostly not covered by labour legislation. They are usually exploited by intermediaries, businessmen, and employers who exploit their weak position. Most of them work in hazardous and unhygienic environments with no or minimal legal protection. Child workers are commonly abused, and women workers are sexually harassed at the workplace. Because of illiteracy, ignorance, and the geographically dispersed character of

their occupation, they cannot avail themselves of legal protection. Apart from the poor working conditions, unorganized workers lack basic amenities. They work in congested environments with poor sanitation and no clean drinking water. Their living conditions are poor, and their children lack access to basic services like education, healthcare, and nutrition. This deprivation traps them in the cycle of poverty, making it impossible for them to advance their socio-economic status. Jobs in the unorganized sector are extremely uncertain too.

Such workers lack job security, since their employment is temporary, scattered, and irregular. Most of them have seasonal or casual employment, rendering them a disguised workforce with no stability over the long term. They are not entitled to protective labour laws like the Provident Fund Act, Gratuity Act, Pension Act, Factories Act, or Maternity Act. Their jobs depend mostly on the volition of their employers, thus leaving them extremely exposed to mass dismissal. The second most important point is ignorance about workplace security. The majority of unorganized workers are not informed about the hazards of their occupations.

They are subjected to factory dust, hazardous chemicals, old machinery, and harsh climatic conditions, all of which are directly dangerous for their health. Consequently, they are afflicted by respiratory diseases, musculoskeletal conditions, cardiovascular diseases, and other occupational diseases. Lack of safety guidelines and concern results in on-the-job accidents and even death. Exploitation is a chronic problem for unorganized labourers, who are not protected by law unlike their fellow labourers in the organized sector. They are treated to discriminatory labour practices, which involve denial of equal pay for equal work, especially in respect of women and children. Overtime is forcibly imposed on a lot of them without any further remuneration, and paid holidays and other privileges are taken away from them.

As such, being at their mercy due to their fragile position, they cannot speak up about their claims or assert what is rightfully due to them. Poverty is still the biggest threat to unorganized workers. The poor economic condition compels them to stay in insecure jobs without any possibility of enhancing their financial status. They do not have access to tools that can facilitate them to become more productive or start small businesses, and so they are caught in a low-income job cycle and debt trap. The degrading quality of their work makes it impossible for them to attain a secure income, further complicating their economic woes. Another concern is the poor

organizational link between unorganized workers and trade unions. Most of them do not know unions exist or even the function they have in protecting workers' rights.

Therefore, they labour without any official support mechanism, giving employers in the unorganized sector leverage to break labour laws and go unpunished. Lack of union representation also makes their bargaining capacity weaker, leaving them open to exploitation. Lastly, the unorganized sector still depends on traditional methods and old ways of production. Most workers in the sector do not have the technical know-how to employ modern technology, which restrains their output and competitiveness. Their production remains mostly localized for small markets with no advantage from technological progress. Since their job is labour intensive, they carry heavy workloads and cannot effectively compete with mechanized industries, and they therefore lose jobs. Though they have played a vital role in the Indian economy, the unorganized workers are still among the most vulnerable sections of society. Resolving their issues entails wider policy measures, improved labour regulation, education, and healthcare access, along with technological improvements in their work environment and economic security.

VII. The Motive Behind The Legislation

The Government of India has passed the Social Security for Unorganized Workers Act, 2008 to facilitate social security provisions for unorganized workers. The legislation is specifically aimed at non-unionized workers and offers them benefits in life and disability insurance, health and maternity benefits, old age protection, and other welfare provisions as laid down by the central government. Also, the Act authorizes state governments to design welfare policies for unorganized workers, such as arrangements for provident funds, compensation to workers, housing, education, skill development schemes, funeral benefits, and housing for the elderly.

The Act also provides for the creation of a National Social Security Board at the central level. This board is tasked with:

1. Suggesting social security schemes for unorganized workers,
2. Advising the central government on administration,
3. Overseeing central government social schemes

4. Monitoring registration progress and assessing state-level performance,
5. Monitoring the spending of money,
6. Performing any other duties delegated by the central government.

In 2009, the Indian Government set up the National Social Security Board for Unorganized Workers under the Act. Likewise, the Act requires the establishment of a State Social Security Board to:

1. Suggest welfare schemes for unorganized workers at the state level,
2. Advise the state government regarding administration,
3. Monitor state-level welfare schemes,
4. Evaluate registration progress and district-level performance,
5. Scrutinize fund expenses,
6. Carry out any other duties entrusted by the state government (Mann, 2010).

The Act also makes mention of some of the prevailing labour acts to cater to the needs of unorganized workers, namely, the Workmen's Compensation Act, 1923 (8 of 1923), the Industrial Disputes Act, 1947 (14 of 1947), the Employees' State Insurance Act, 1948 (34 of 1948), the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), the Maternity Benefits Act, 1961 (53 of 1961), the Payment of Gratuity Act, 1972 (39 of 1972). These enactments give a statutory mechanism to resolving the social security issues of unorganized workers.

VIII. Salient Features Of The Legislation

To protect the welfare of workers in the unorganized sector, the Ministry of Labour & Employment passed the Unorganised Workers' Social Security Act, 2008, which took effect on May 16, 2009. The Act is supplemented by Central Rules prescribing its implementation.

The Act defines key terms such as unorganized workers, self-employed individuals, and wage workers under Section 2. Section 3(1) mandates the Central Government to formulate schemes for various categories of unorganized workers, covering aspects such as life and disability

insurance, health and maternity benefits, old age protection, and any other benefits deemed necessary by the government. Also, Section 3(4) directs State Governments to formulate schemes concerning provident funds, employment injury compensation, housing, education of children of workers, skill development, funeral expenses, and setting up old age homes. Section 4 prescribes the mechanism for funding schemes brought in by the Central Government, and Section 5 makes provision for the establishment of the National Social Security Board.

This Board is headed by the Union Minister for Labour & Employment, with the Member Secretary being the Director General (Labour Welfare). It has 34 nominated members, consisting of Members of Parliament, representatives of unorganized workers and their employers, civil society members, and Central Ministries and State Governments officials. There is proper representation of persons belonging to Scheduled Castes, Scheduled Tribes, minority communities, and women. The Board shall also suggest the proper schemes, oversee their implementation, and guide the Central Government regarding the administration of the Act. In the same vein, Section 6 permits the establishment of State-level Social Security Boards. Section 7 explains the funding mechanism for State Government-designed schemes, and Section 8 mandates the maintenance of records by the District Administration. For this purpose, State Governments can instruct District Panchayats in rural areas and Urban Local Bodies in towns and cities to keep the relevant records. In addition, Section 9 requires the creation of Workers' Facilitation Centres, which are an important resource for unorganized workers. The centers have the responsibility to spread information regarding social security schemes available, aiding in the registration of workers through the district administration, and getting them enrolled in appropriate welfare schemes.

Section 10 of the Unorganised Workers' Social Security Act, 2008, provides for the eligibility and registration of workers under the Act. Sections 11 to 17 have different provisions for the smooth implementation of the Act. For the implementation of the Act, the Unorganised Workers' Social Security Rules, 2009, were framed, and the National Social Security Board was formally established on August 18, 2009. The Board is tasked with making recommendations on social security schemes such as life and disability insurance, health and maternity benefits, old age protection, and other welfare measures as decided by the government. The Board, since its inception, has conducted six meetings and recommended extending schemes like Rashtriya

Swasthya Bima Yojana (RSBY), Janshree Bima Yojana (JBY), and Old Age Pension to certain groups of unorganized workers.

Apart from these, the Rashtriya Swasthya Bima Yojana (RSBY), a health insurance program for Below Poverty Line (BPL) families in the unorganized sector, was launched on a formal basis on October 1, 2007. The scheme went on stream on April 1, 2008, offering beneficiaries a smart card-based, cashless health insurance cover of ₹30,000 per family annually on a family floater basis. It also provides for coverage of pre-existing ailments, hospitalization charges (including maternity benefit), and transportation charges of ₹100 per visit. On March 31, 2014, the scheme was being implemented in 28 States and Union Territories and 3.85 crore smart cards had been issued. Gradually, the coverage under RSBY was increased for registered construction workers under the Building and Other Construction Workers (Regulation of Employment and Condition of Service) Act, 1996, street vendors, beedi workers, domestic workers, and MGNREGA workers who worked for 15 days or more during the previous financial year.

To ensure financial security in the event of death or disability, the Aam Aadmi Bima Yojana was initiated on October 2, 2007, for rural landless families with members between the ages of 18 and 59 years. The head of the family or an earning member is insured under this scheme. The Central Government pays 50% of the ₹200 annual premium per person, and the State Government pays the other 50%. The plan provides an amount assured of ₹30,000 in case of natural death and ₹75,000 on accidental death or permanent total disability (e.g., loss of both eyes, both limbs, or one eye and one limb in an accident). For partial permanent disability like loss of one eye or one limb in an accident, the insured individual is provided with an insurance cover of ₹37,500.

These programs show the government's continuous endeavor towards strengthening social security for unorganized sector workers so that they remain covered under healthcare, financial protection, and welfare benefits.

The scheme also includes an additional benefit in the form of a scholarship for up to two children of a beneficiary studying in classes 9 to 12. Each child is entitled to ₹300 per quarter as financial assistance. As of March 31, 2014, more than 4.54 crore individuals had been covered under the scheme.

In an effort to enhance financial security for the elderly, the Government of India revamped the National Old Age Pension Scheme and launched the Indira Gandhi National Old Age Pension Scheme (IGNOAPS) on November 19, 2007. Under this scheme, old age pensions are provided not only to destitute senior citizens but to all individuals above the age of 60 years who live below the poverty line. For those above the age of 80, the pension amount was increased from ₹200 to ₹500 per month. Additionally, state governments have been encouraged to supplement the central government's contribution of ₹200 per month. By March 31, 2014, more than 2.18 crore individuals had benefited from the scheme.

To promote voluntary retirement savings among unorganized sector workers and to reduce the operational costs of the New Pension Scheme (NPS) for such subscribers, the Central Government launched a co-contributory pension scheme called Swavalamban on September 26, 2010. Under this scheme, the Government of India contributes ₹1,000 annually to each eligible NPS subscriber who contributes between ₹1,000 and ₹12,000 per year. This government contribution was made available for a period of five years, from the inception of the scheme until 2016-17, for all accounts opened by 2012-13. By November 10, 2012, more than 11.29 lakh individuals had enrolled under Swavalamban, and the scheme was expected to benefit around 70 lakh unorganized sector workers by 2016-17.

With approximately 94% of India's workforce engaged in the unorganized sector, ensuring their social security remains a critical challenge. Recognizing this, the Government of India enacted The Unorganized Workers' Social Security Act, 2008, to provide comprehensive welfare measures for these workers. However, various social security schemes are currently being implemented by multiple ministries, departments, and state-level agencies, each with different eligibility criteria, enrollment processes, and benefits. As a result, unorganized workers often face difficulties navigating different government agencies for registration and availing benefits. Addressing these challenges through better coordination and a streamlined approach remains essential for ensuring effective social security coverage for the unorganized workforce.

Though many welfare schemes are in place for unorganized sector workers, beneficiaries find it difficult to access them. One of the primary concerns is a lack of awareness of entitlements, eligibility conditions, application process, documents required, and grievance redressal. Workers

also tend to suffer wage losses and transportation costs in trying to claim benefits under various schemes, making them less inclined to join in.

In response to these challenges, the Government of India has seen the imperative for a centralized database that accumulates eligibility information for all unorganized workers. In order to make multiple schemes easily accessible, the government has sanctioned a plan to consolidate three significant social security schemes—Rashtriya Swasthya Bima Yojana (RSBY), Aam Aadmi Bima Yojana (AABY), and Indira Gandhi National Old Age Pension Scheme (IGNOAPS)—onto a single smart card platform. This integrated system will enable employees to enroll in various schemes and keep their information on a single smart card, which can be utilized throughout the country. In order to test the success of this project, the government has resolved to initiate a pilot project in 20 districts throughout the country.

Under this scheme, more than 3,000 Single Points of Contact (SPCs) will be opened to ensure that unorganized workers can register, access services, claim benefits, and get grievance redressal at a place convenient to their residence. If successful, the scheme will be gradually rolled out across the country, making social security benefits more effective and accessible for crores of unorganized workers.

IX. Major Issues In Implementation Of This Act

The legal provisions for the working conditions and employment relations of India's large and varied workforce are the greatest challenge to employment policy. The guiding philosophy of the legal provisions is found in the Constitution of India, which takes the attainment of humane and sustainable employment as a significant goal of State policy. These encompass providing citizens sufficient means of living; equal work for equal pay to women and men; provide protection of health and safety of workers and a living wage to all workers. In order to pursue these objectives and to accommodate the changing economic scenario, the government has enacted and modified several labour laws from time to time. Some of these regulations cover 4,444 industries while others target individual industries, occupations and sectors.

The 4,444 various labour laws in India fall into four broad categories: 4,444 (a) employment security and 4,444 industrial relations; (b) Income security, i.e. wages and other benefits; (c)

Labour safety, i.e. conditions of work, occupational safety and health; and (d) Social security and labour protection. Four major issues have been at the center of the recent debate on labour law reforms in India. Law must continually weigh the imperative of social protection and protection of workers' rights, but permit economic expansion and rising employment levels.

This has caused some to contend that legal rules contribute to an excessively inflexible labour market, with adverse effects on employment levels (rigidity). In addition, legal norms need to counter the enduring dualism of the labour market, i.e. the distinction between the organized sector on the one side and the relatively unorganized sector on the other. Original Labour is on the concurrent list, which has central laws as well as as well as state laws and state amendments to central laws. Besides, there are 4,444 legal documents spanning numerous various sectors, regions and company sizes, with varying definitions of 4,444 industries, employees and firms (diversity). And lastly, there are concerns about the application of and obedience to labour law (enforcement). Employers' organizations and employees' organizations tend to have opposing views about each one of these, while there are also points of shared concern.

The unorganised or the informal economy constituting a whopping percentage of the poor and vulnerable population in otherwise India's prosperous scenario. It is focused on a case-by-case analysis of the terms of work and lives of the unorganised workers totaling around 92 per cent of the total workforce numbering around 457 million (as of 2004-05). For the majority of them, working conditions are abysmal and livelihood choices very limited. This sordid scenario exists uncomfortably alongside a glittering India that has been able to meet the challenge of globalisation driven by rising economic competition both domestically and globally. The achievements of the glittering India are undoubtedly impressive particularly from a macroeconomic point of view.

It is not only marked by the high performance in aggregate economic growth but also in many other parameters. India's real national income increased by 125 per cent between the period of economic reforms 1992/93 - 2005/06 and 97 per cent between the earlier period of the same length. As a result, the per capita income rose by 77 per cent between 1992/93 - 2005/06. There has been an increased feeling of buoyancy in the economy over the past three years with the growth rate being above 9 per cent per annum. The savings rate of the economy has risen

from a long time average of 22-24 per cent to 30 per cent in recent years with a corresponding increase in investment rate currently exceeding 30 per cent. Growth in exports has averaged to around 20 per cent per annum matched by a similar rate of growth in imports. The steady flow of remittances and earnings from invisible exports as well as increasing flow of foreign investments has swelled the foreign exchange reserves to more than 200 billion US Dollars.

The foreign exchange rate has remained remarkably stable, even though the Rupee has been strengthening against the US Dollar in the last few months. The external debt burden of the country is not only within manageable limits but also one of the lowest in the developing countries. Such buoyancy in the economy did lead to a sense of euphoria by the turn of the last century. However, a majority of the people, who did not have even Rs. 20 a day for consumption, were not touched by this euphoria. At the end of 2004-05, about 836 million or 77 per cent of the population were living below Rs.20 per day and constituted most of India's informal economy. About 79 per cent of the informal or unorganised workers belonged to this group without any legal protection of their jobs or working conditions or social security, living in abject poverty and excluded from all the glory of a shining India. Recognizing this paradox, the Common Minimum Programme (CMP) of the United Progressive Alliance promised to initiate measures for the welfare of the common people by addressing, inter alia, the concerns of the workers in the unorganised sector.

The CMP expressed this in a number of places when it stated: "The UPA government is firmly committed to ensure the welfare and well-being of all workers, particularly those in the unorganized sector who constitute 93 per cent of our workforce. Social security, health insurance by a similar rate of growth in imports. The steady flow of remittances and earnings from invisible exports as well as increasing flow of foreign investments has swelled the foreign exchange reserves to more than 200 billion US Dollars. The foreign exchange rate has remained remarkably stable, even though the Rupee has been strengthening against the US Dollar in the last few months. The external debt burden of the country is not only within manageable limits but also one of the lowest in the developing countries."

The economic boom at the beginning of the century gave rise to euphoria. But this euphoria did not reach the masses, who lived on less than Rs. 20 a day. At the end of 2004-05, nearly 836

million people, or 77% of the population, lived below this line, which was the backbone of India's unorganized economy. Moreover, nearly 79% of unorganized or informal workers comprised this group and did not receive legal protection, secure working conditions, and social security. These people suffered immense poverty, without access to the prosperity of an alleged "Shining India." Realizing the glaring inequality, the UPA government's CMP committed itself to implementing programs that would strengthen the welfare of the common citizens, especially overcoming the problems associated with unorganized sector workers.

X. Conclusion

It is widely acknowledged that unorganized workers are the most vulnerable and insecure section of society, despite their immense contribution to the Indian economy. The number of non-union workers has grown at an alarming pace, yet their root issues are still not addressed. The Indian government has legislated several dozen regulations to grant social security to unorganized workers, but none of these laws have been able to fulfill their planned objectives. Many social security programs have been established by independent scientific governments but fail to protect the rights and welfare of non-union workers. Some schemes like IGNOAPS provide only Rs. 200-500/- as monthly pension, the basics of NFBS to non-union workers. Although the Social Security for Unorganized Workers Act, 2008 has identified 10 social security schemes for unorganized workers, the Act has mentioned only some of the scheme guidelines.

This process is not legally binding on the government or employers. Additionally, most workers are unaware of their rights and government welfare programs. In some cases, even though they know the programs well, they do not know how or where to access them. Therefore, a section of the government, the National Social Security Commission, NGOs and all other stakeholders should join hands to showcase India as a welfare state in the true sense of this term. Of course, the government is showing a changing trend in showing concern and ensuring the welfare of the working population in society. Millions of beneficiaries have been registered under various ongoing social security schemes, which are capable of addressing at least some of the basic needs and problems of the unorganized workers in the country. Although little has been done to provide social security coverage to the rural poor and unorganized workers, the country

has taken some initial steps in this direction. The Central and State Governments have formulated several specific schemes to support the unorganized workers which fail to meet the real needs and requirements of the unorganized sector workforce.

This became clear even as the much-heralded National Rural Employment Guarantee Act, 2005 (NREGA) which, although a breakthrough, had no common wage across states and was limited to just one hundred working days for workers registered under the National Rural Employment Guarantee Act, 2005 (NREGA) Act. What about the rest of the year? According to this law, the employment guarantee only applies to rural areas, but what about the urban poor? And looking at the recent Social Security for Unorganized Sectors Act (2008), one really wonders whether the Act has any provisions for unorganized workers other than some guidance on whether social security programs exist in the country or not. How can it be called a law if it is not legally binding and has no provisions regarding the right to work and benefits from it? Here, under the law, there is no mention of what constitutes appropriate and adequate social security for the majority of unorganized workers and their dependents, what are the eligibility criteria, if any, should be regulated, what level of benefits the employee will receive. and what their families are entitled to receive and under what conditions, what financial arrangements will have to be made to meet social security costs, etc.

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ROLE OF INDIGENOUS COMMUNITIES IN CLIMATE CHANGE ADAPTATION: AN INCLUSIVE MECHANISM

- DR. SANJUKTA GHOSH¹¹⁶

I. INTRODUCTION

“Whenever an old man dies, it’s a library burning down”¹¹⁷

Since the past three decades, issues pertaining to climate change have become a matter of serious discourse at local, regional and global platforms.¹¹⁸ Not a single corner of the ‘planet blue’¹¹⁹; even the space above and underneath is resistant to it. The sequels of climate change are very often inversely proportionate as the continents/countries who are the least contributors to the cause, are the worst sufferers of its nuances. Effects of climate change have gradually unfurled from global warming to desertification, melting of glaciers, forest fires, species decline and a lot more. These effects further lead to serious concerns. Consider melting of glaciers. This is not a single phenomenon. Melting of glaciers causes rise in sea levels which in turn accelerates coastal erosion.¹²⁰ Increase in global temperature gets reflected within the movements of ocean current that fuels up storm surge.¹²¹ With each passing quarter of clock, it is changing its shape

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¹¹⁷ Amadou Hampate Ba, Malian writer, historian and ethnologist.

¹¹⁸ Douglas Nakashima, Igor Krupnik, *et.al.* (eds.), *Indigenous Knowledge for Climate Change Assessment and Adaptation* (Cambridge University Press and UNESCO, Cambridge and Paris, 2018).

¹¹⁹ Planet Earth is also known as the BLUE PLANET due to the abundance of water on its surface. Here on the Earth’s surface, liquid water has always been taken for granted and that is because our bodies are mostly made of water. However, liquid water is an infrequent/ rare commodity in the entire solar system. No water in liquid form has been confirmed in our solar system, but it is likely that Jupiter’s moon Europa and Saturn’s moon Enceladus have liquid oceans under a frozen crust. Moreover, not a single drop of water been observed yet in interstellar space. This is because only a planet of the right mass, chemical composition, and location can support liquid water. And only on such planets could life as we know it flourish. Liquid water covers most of the surface of our planet- that is Earth. For more details, please visit: <https://www.globalchange.umich.edu/globalchange1/current/lec> (page last visited on 08/09/2024).

¹²⁰ For more details, please visit: <https://www.Wildlife.org/pages/why-are-glaciers-and-sea-ice-melting#:~:text=Melting%20glaciers%20add%20to%20rising,storm%20like%20hurricanes%20and%20typhoons> (page last visited on 14/08/2024).

¹²¹ The heat of the sun is mainly absorbed by the ocean waters, like a giant solar panel. Once the waters retain this heat, it distributes all the heat all around the globe. This heat is carried through the ocean currents, or mass flow of water that are continuous and directional, moving horizontally and driven by Earth’s rotation (the Coriolis effect), the sun, wind, and differences in water density. So when it comes to whether and climate, patterns can be traced back to ocean currents. The heat that the ocean absorbs eventually fuels the air circulation in the atmosphere. This is

and size to become for vicious only. An array of researches has shown that participation of indigenous communities in climate change discourses & dialogue exchange and/or inclusion of indigenous/tribal knowledge in scientific underpinnings and devices can significantly be used to reduce the affects of climate change.¹²² Indigenous people try to find solutions of every problem related to their survival within the nature itself. As they know that forests and nature are the two most essential and indispensable factors for their living, they constantly keep on trying to find ways to restore nature and biodiversity while using the same for their livelihood. Indigenous knowledge system and allied practices are proved to be as of substantial recourse for climate-change adaptation.¹²³ Indigenous communities over generations, through continuous study (practical experiences) and practise, have conceived ways both to alleviate and adapt to the impacts of climate change.¹²⁴ The indispensable knowledge base that the indigenous people are believed to be carrying since ages, has now been widely recognised as possessing valuable resources for adapting to changes owing to climate alterations.¹²⁵ Relevant studies have revealed the indomitable value of indigenous peoples' reflections of changes in weather patterns due to change in climate¹²⁶, ocean phenomena¹²⁷, phenology¹²⁸ and fire behaviour¹³⁰. The knowledge of indigenous people and their communities of past environmental, ecological and geophysical

through evaporation which changes the humidity and temperature of the air, causing rain, storms, and/or wind. *For more details, please visit:* <https://www.greenmatters.com/weather-and-global-warming/how-do-ocean-currents-affect-climate>(page last visited on 05/09/2024).

¹²² Tamiru Lemi, "The Role of Traditional Ecological Knowledge (TEK) for Climate Change Adaptation" 18 *International Journal of Environmental Sciences and Natural Resources* (2019), DOI: 10.19080/IJESNR.2019.18.555980

¹²³ Jan Petzold, "Indigenous Knowledge on Climate Change Adaptation: A Global Evidence Map of Academic Literature" 15 *Environmental Research Letters* 1 (2020). DOI: 10.1088/1748-9326/abb330.

¹²⁴ Vinode Kumar, "Role of Indigenous Knowledge in Climate Change Adaptation Strategies: A Study with special reference to North-Western India" 5 *Journal of Geography and Natural Disasters* (2015). DOI: 10.4172/2167-0587.1000131.

¹²⁵ United Nations Educational, Scientific and Cultural Organisation and United Nations University, *Weathering Uncertainty: Traditional Knowledge for Climate Change Assessment and Adaptation* (UNESCO, Paris and UNU, Darwin, 2012).

¹²⁶ D. Green and G. Raygorodetsky, "Indigenous Knowledge of a Changing Climate" 100 *Climatic Change* 239-242 (2010).

¹²⁷ A. Fienup-Riordan and A. Rearden, "The Ice is always Changing: Yup'ik Understandings of Sea Ice, Past and Present" in I. Krupnik, C. Aporta, S. Greenheard, G. Laidler and L. Lielsen Holme, et. al. (eds.), *SIKU: Knowing Our Ice* 295-320 (Springer, Dordrecht, 2010).

¹²⁸ Phenology is the study of natural phenomena (biological life-cycles) that recur periodically in plants and animals and of the relationship of these phenomena to seasonal changes and climate.

¹²⁹ A. Egeru, "Role of Indigenous Knowledge in Climate Change Adaptation: A Case Study of the Teso Sub-region" 11 *Indian Journal of Traditional Knowledge* 217-224 (2012).

¹³⁰ L. Mason, G. White and M. Gea, "Listening and Learning from Traditional Knowledge and Western Science: A Dialogue on Contemporary Challenges of Forest Health and Wildlife" 110 *Journal of Forestry* 187-193 (2012).

patterns can be of inadvertent aid in connecting historical evidences with the present and in reconstructing the gaps for a better future through sustainable means and ecological behaviour¹³¹. Thus, the creation and accumulation of indigenous knowledge has been substantiated as to be effective in climate change adaptations.¹³²

II. CONCEPTUALISING INDIGENOUS KNOWLEDGE AND ANALISING ITS WORKING PATTERN

Attempts have been made to define indigenous knowledge as knowledge linked to a single culture or society, collectively owned, conceived through years of community experience by way of informal experiments, intimate understanding of the environment in which a community dwells. It is that knowledge system that is preserved by the community and is borne by generations.¹³³ Howsoever easy it may seem defining indigenous knowledge; it is not at all a cake walk. Hundreds of questions and debates surround this knowledge system such as: can knowledge be localised? Can a particular community be said to be the owner of knowledge? Can the very origin of indigenous knowledge be traced? How indigenous knowledge differ from tribal knowledge or traditional knowledge? Does indigenous knowledge of various communities differ in its content or in user? How can indigenous knowledge system be linked with academia? Can indigenous knowledge be authenticated through scientific experiments?¹³⁴ In the western part of the globe, indigenous knowledge has very often been linked with the nature as something very primitive, very wild and as has been existing since time immemorial.¹³⁵ However, indigenous knowledge can be understood as:

“The process through which the natives of a particular area have built a relationship with their natural environment. Thus, indigenous knowledge is nurtured over time

¹³¹ Thomas F. Thornton and Adela Maciejewski Scheer, “Collaborative Engagement of Local and Traditional Knowledge and Science in Marine Environment: A Review” 17 *Ecology and Society* (2012).

¹³² The World Health Organisation defines ‘adaptation’ as “adjustment in natural or human systems to a new or changing environment. Adaptation to climate change refers to adjustment in response to actual or expected climate stimuli or their effects, which moderates harm or exploits beneficial opportunities. Various types of adaptation can be distinguished, including anticipatory and reactive adaptation, private and public adaptation, and autonomous and planned adaptation”. World Health Organisation, *Climate Change and Human Health: Risks and Responses* (2003).

¹³³ Supra note 8.

¹³⁴ L. M. Semali and J. L. Lincheloe, *What is Indigenous Knowledge: Voices from the Academy* 6 (Routledge, New York, London, 2011).

¹³⁵ Ibid.

*and tied to a certain community”.*¹³⁶

Indigenous knowledge is a body of knowledge which is living and has been developed & deciphered, strengthened and carried on from generation to generation within a community, thus, forming part of its very cultural or spiritual identity.¹³⁷ A very significant discussion at this juncture could be the way Berks has attempted to define traditional ecological knowledge as a-

*“cumulative body of knowledge, practice, and belief, evolving by adaptive processes and handed down through generations by cultural transmission, about the relationship of living beings (including humans) with one another and with their environment”.*¹³⁸¹³⁹

“Vidyam Dadati Vinayam, Vinayad Yati Patratam:

Patratvat Dhanamapnoti Dhanat Dharmam Tatah Sukham.”¹⁴⁰

It is now highly acclaimed that the human clan cannot survive without exploiting natural resources. It is because of this that the national and international communities have now realised exclusive ‘mitigation’ policies or ‘adaptation’ oriented practices would not suffice. Rather, these must be mutually adaptive while complimenting each other.¹⁴¹

¹³⁶ Robert J. Tierney and Fazal Rizvi, et. al. (eds.), *International Encyclopedia of Education* 349-357 (Fourth Edition, 2023).

¹³⁷ World Intellectual Property Organisation, *Intellectual Property and Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions* (WIPO, Geneva, 2015).

¹³⁸ Fikret Berkes, *Sacred Ecology* (Routledge, New York, 3rd edn. 2012).

¹³⁹ Terry Williams and Preston Hardison, Culture, Law, Risk and Governance: Contexts of Traditional Knowledge in Climate Change Adaptation 120 *Climate Change* 533 (2013).

¹⁴⁰ Knowledge gives humility, from humility one attains character; from character, one acquires wealth; from wealth, good deeds follow and then happiness.

¹⁴¹ A. Nyong, F. Adesina & B. Osman Elasha, The value of indigenous knowledge in climate change mitigation and adaptation strategies in the African Sahel, 12 *Mitigation and Adaptation Strategies for Global Change* 787–797 (2007). <https://doi.org/10.1007/s11027-007-9099-0>

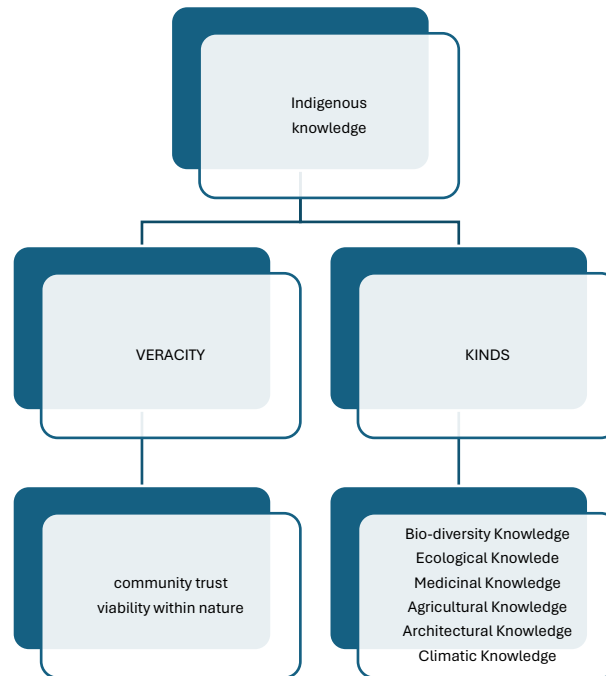


Diagram 1¹⁴²

Source: Self

Indigenous knowledge can take various shapes and dimensions, such as- biodiversity knowledge, ecological knowledge, medicinal knowledge, agricultural knowledge, architectural knowledge and/or climatic knowledge.¹⁴³

WORKING OF INDIGENOUS KNOWLEDGE SYSTEM:

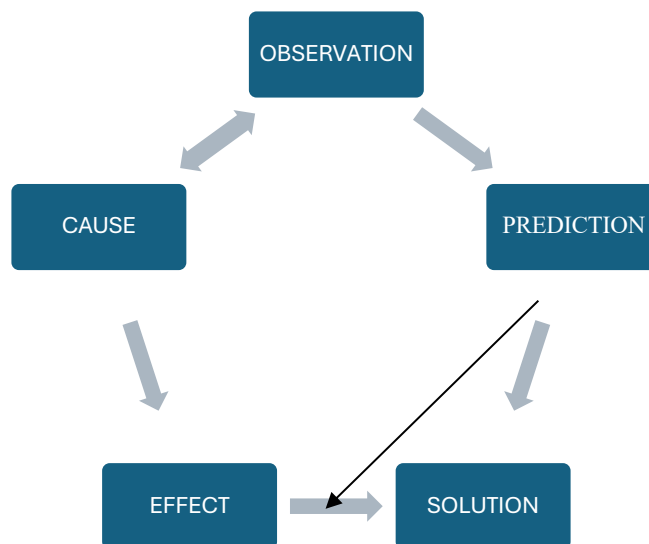


Diagram 2

Source: Self

¹⁴² Diagram 1 represents the foundation of indigenous knowledge system and also classifies its kinds.

¹⁴³ Padmavati Manchikanti and Ajay Jose, "Traditional Knowledge- The Changing Scenario in India" 18 *Indonesian Journal of International Law* 395-422 (2021).

PROBABLE DETERMINING FACTORS IN IDENTIFYING INDIGENOUS AND TRIBAL PEOPLE:

The 1989 Convention on indigenous and tribal people, adopted by the International Labour Organisation (ILO), provides for the criteria for identifying indigenous and tribal people¹⁴⁴.

	SUBJECTIVE CRITERIA	OBJECTIVE CRITERIA
INDIGENOUS PEOPLE	Self identification/determination as belonging to an indigenous community.	<ul style="list-style-type: none"> • They have descended from populations who inhabited the country or geographical region at the time of subjugation, colonization or establishment of present state boundaries. • They have retained at least some or all of their own social, economic, cultural and political institutions, irrespective of their legal status.
TRIBAL PEOPLE	Self identification/determination as belonging to a tribal community.	<ul style="list-style-type: none"> • Their social, cultural and economic state of affairs/circumstances distinguish them from other sections of the national community. • Their status is governed wholly or partially by their own customs or traditions or by special laws or regulations.

Source: ILO

¹⁴⁴ ILO Indigenous and Tribal Peoples Convention, 1989, art. 1.

III. INDIGENOUS KNOWLEDGE SYSTEM AND CLIMATE CHANGE

There are hundreds of instances which have been scientifically defended that climatic oscillations have resulted in devastating floods, draughts, earthquakes etc.¹⁴⁵ These natural calamities have not occurred suddenly. Gradual variations in the climate and nature have eventually led to these conditions. Indigenous knowledge system being so deeply embedded with nature, functions through careful observations of the nature. This allows these communities to notice the minute changes occurring within the nature and that permits them to draw a causal inference.¹⁴⁶ These communities are more into ‘why things occur?’ that is basically what we technically call as etiology.¹⁴⁷ Over the years, these indigenous communities have largely relied upon their knowledge (indigenous knowledge) which they have inherited from their ancestors over generations. Although these indigenous knowledge systems often lack scientific validation then too these are considered to be a potent alternative to the mitigation-adaptation mechanism for climate change.^{148 149} Indigenous knowledge systems over generations have gained importance and more since the last few decades. This is because these knowledge systems are founded upon careful observation and critical analysis of facts; mostly of facts occurring in the nature. Such environmental/ecological knowledge systems are few of the most prominent tools to encounter natural disasters and also to preserve and restore environment through sustainable means.¹⁵⁰ It is indeed very fascinating to know how indigenous communities observe and study natural phenomena to predict climate variations¹⁵¹:

- Arrival of certain flowers signifies arrival of seasons.
 - Example: arrival of Kaash flower all over Bengal indicates arrival of autumn,

¹⁴⁵ Aparna Pareek and P. C. Trivedi, Cultural Values and Indigenous Knowledge of Climate Change and Disaster Protection in Rajasthan 10 *Indian Journal of Traditional Knowledge* 183-189 (2011).

¹⁴⁶ Ibid.

¹⁴⁷ Etiology: The investigation or attribution of the cause or reason for something, often expressed in terms of historical or mythical explanation.

¹⁴⁸ Supra note 15.

¹⁴⁹ Climate change mitigation and adaptation are two complimentary strategies to address the climate crisis: Mitigation: By mitigation strategy, the amount of greenhouse gases released in the atmosphere can be reduced which prevents the atmosphere from heating up.

Adaptation: Adaptation strategy helps people and communities to adapt to the climate change effects.

¹⁵⁰ John Briggs, The Use of Indigenous Knowledge in Development: Problems and Challenges 5 *Progress in Development Studies* (2005).

¹⁵¹ Aparna Pareek and P. C. Trivedi, Cultural Values and Indigenous Knowledge of Climate Change and Disaster Protection in Rajasthan 10 *Indian Journal of Traditional Knowledge* 183-189 (2011).

arrival of palaash in few districts in Bengal, indicates arrival of spring.

- Growth of new leaves-indicates arrival of spring.
- Lush green colour of leaves indicates rainy season.
- Appearance of many butterflies indicates early rainfall onset and also gives a prospect of good season.
- Black ants carrying eggs while moving from one place to another indicates heavy rainfall. Lots of ants coming out indicates rise in temperature.
- Appearance of many termites indicates near rainfall onset.
- When frogs start to make a lot of noise, it indicates rainfall.
- Falling of leaves indicates arrival of winters.

Indigenous knowledge is useful in identifying and locating environmental baselines; that is, the cause of the problem. It is also capable of identifying effects which are to be alleviated, providing for experience-based evidence and technologies for modelling adaptation mechanism.¹⁵²

SOME OF THE MAJOR INTERNATIONAL INSTRUMENTS EXCLUSIVELY DEDICATED TO INDIGENOUS COMMUNITIES:

NAME	YEAR
Indigenous and Tribal Peoples Convention ¹⁵³	1989

¹⁵² Terry Williams and Preston Hardison, Culture, Law, Risk and Governance: Contexts of Traditional Knowledge in Climate Change Adaptation 120 *Climate Change* 531-544 (2013).

¹⁵³ ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169).

Indigenous and Tribal Populations Convention ¹⁵⁴	1957
United Nations Declaration on the Rights of Indigenous Peoples ¹⁵⁵	2007
United Nations World Conference on Indigenous Peoples ¹⁵⁶	2014
2030 Agenda for Sustainable Development ¹⁵⁷	2015
Paris Agreement ¹⁵⁸	2015

IV. INDIGENOUS KNOWLEDGE AND GLOBAL CLIMATE CHANGE STRATEGIES

In many of the global climate change discourses and policies, the role of indigenous knowledge systems and indigenous communities has been deliberated upon.¹⁵⁹ Since the adoption of the Kyoto Protocol¹⁶⁰ in 1997, which primarily aimed at reducing greenhouse gas emissions globally, the members of indigenous communities upheld their voices to get

¹⁵⁴ ILO Indigenous and Tribal Populations Convention, 1957 (No. 107).

¹⁵⁵ UN General Assembly Resolution No. 61/295.

¹⁵⁶ UN General Assembly Resolution No. 65/198.

¹⁵⁷ The United Nations launched the 2030 Agenda for Sustainable Development in 2015 to eradicate poverty, protect the planet, and achieve sustainable development for all.

¹⁵⁸ United Nations Framework Convention on Climate Change, Paris Agreement, December 12th, 2015.

¹⁵⁹ IUCN, “Indigenous and Traditional Peoples and Climate Change” (The International Union for Conservation of Nature, 2008).

¹⁶⁰ Kyoto Protocol to the United Nations Framework Convention on Climate Change (UNFCCC), December 10th, 1997.

representation at the global stage in climate change related talks. However, their plight remained unheard. These communities are mostly victimised because of climate change; although, they are the least to contribute to the cause. In almost every climate change related agreements they have always been considered as victims, but their potential as mitigators has always been circumvented.¹⁶¹ Indigenous people are the first to face the impacts of climate change related hazards.¹⁶² IPCC¹⁶³ has revealed that the people/communities who are socially, economically, politically, culturally, institutionally, geographically or otherwise disparaged are also the worst sufferer of climate-change victimisation.¹⁶⁴ United Nations Framework Convention on Climate Change (UNFCCC)¹⁶⁵ adopted at the United Nations Conference on Environment and Development (UNCED), also known as the Earth Summit, 1992, at Rio de-Janeiro, mandates that the state parties should endeavour to protect the climate system on the basis of “*common but differentiated responsibilities and respective capabilities*”¹⁶⁶¹⁶⁷. The UNFCCC further urges that the state parties, while taking measures to achieve the objective set forth in the convention, must consider the *needs* and *special circumstances* of the developing countries and especially of those who are vulnerable, or are particularly exposed to the adversarial impacts of climate change and also of those who might have to bear the inordinate freight of the mandates of this convention.¹⁶⁸ The UNFCCC further provides for an elaborate classification of countries with vulnerabilities.¹⁶⁹

*RIO +20: UN CONFERENCE ON SUSTAINABLE DEVELOPMENT*¹⁷⁰:

The Rio Conference emphasized on participation of indigenous communities in the adequate

¹⁶¹ International Labour Organisation, “Indigenous Peoples and Climate Change: From Victims to Change Agents through Decent Work” (2017).

¹⁶² United Nations Permanent Forum on Indigenous Issues, “Backgrounder: Climate Change and Indigenous Peoples” (2016).

¹⁶³ IPCC: Intergovernmental Panel on Climate Change.

¹⁶⁴ IPCC, “5th Assessment Report of the Intergovernmental Panel on Climate Change “ (2014).

¹⁶⁵ Hereinafter referred to as UNFCCC.

¹⁶⁶ The United Nations Framework Convention on Climate Change, 1992, art. 3(1).

¹⁶⁷ Linda Etchart, “The Role of Indigenous Peoples in Combating Climate Change” 3 *Palgrave Communications* (2017).

¹⁶⁸ The United Nations Framework Convention on Climate Change, 1992, art. 3(2).

¹⁶⁹ The United Nations Framework Convention on Climate Change, 1992, art. 4(8)(a)-(i).

¹⁷⁰ The United Nations Conference on Sustainable Development (UNCSD), Rio de Janeiro, Brazil, June 13th to 22nd, 2012.

realisation of sustainable development and also acknowledged the importance of UNDRIP¹⁷¹ at all levels for the effective implementation of sustainable development plans.¹⁷² The conference further acknowledges the contribution of various ‘producers’¹⁷³ towards means of sustainable production which are also environmentally sound. It also laid stress upon the role of non-governmental organisations in promoting sustainable development.¹⁷⁴ The conference also ensured that introduction of green-economy policy would “*enhance the welfare of ethnic minorities.....*”¹⁷⁵

V. CONCLUSION:

Protection of indigenous knowledge is central to the conservation and development of environment and ecology through sustainable habits and practices as this knowledge base is founded on the premise of sustainability. There are plethora of evidences that we are at the verge of “*global ecological collapse*”, and to which the most feasible recourse could be utilisation of indigenous knowledge, as most of these communities dwell in areas where vast pool of plant genetic resources (PGRs) or other biological resources are found. The three very fundamental questions, the present paper has attempted to deliberate upon are- *firstly*: what is the role of indigenous communities in climate change adaptation? *Secondly*: why should indigenous knowledge be used in climate change adaptation and mitigation procedures? And *thirdly*: how could indigenous knowledge be used in the context of climate change? Let us now try to find out the solutions of these questions-

- Indigenous communities live in close connection with the nature and that is why their understanding of the nature cannot be undermined/ignored.
- The cornerstone of indigenous knowledge is indomitably years of experience gained by staying within a specific natural environment and observing the nature closely.

¹⁷¹ United Nations Declaration on Rights of Indigenous Peoples, 2007.

¹⁷² Rio +20 Conference, 2012, paragraph 49.

¹⁷³ Producers include farmers, small-scale farmers and fisher folks, pastoralists and foresters.

¹⁷⁴ Rio +20 Conference, 2012, paragraphs 52, 52.

¹⁷⁵ Rio +20 Conference, 2012, paragraphs 58.

- Learning from indigenous knowledge can help in understanding the local community and environment.
- Foreseeability and preparedness: Indigenous communities are the first to face any kind of climate change related effects that is why they observe every slightest change occurring within the nature so that they can be ready to encounter the impacts.
- Sustainable management of natural/land based resources: indigenous communities are thoroughly reliant on natural and/or land based resources. That is why they conserve manage and conserve natural resources and land for their future generations while using the same for their livelihood.
- Indigenous knowledge provides for easy, economic and feasible problem-solving strategies as these communities mostly live in remote areas and they are also not as resourceful as urban people are.
- Research on indigenous knowledge can help to scientifically prove the efficacy of this knowledge.
- Investing in communication or dissemination of indigenous knowledge will help to eradicate poverty and impoverishment.
- Exchange of cross-country indigenous knowledge will help in developing adaptive mechanisms in the context of climate change.

In the present context, it becomes obvious to mention a few provisions of the Constitution of Kenya which clearly states that lands within the territory of Kenya shall be held, used and managed in equitable, efficient, sustainable and productive manner besides productive and sustainable management of land based resources.¹⁷⁶ It also states that the community land shall vest in and shall be held by communities as identified on the basis of ethnicity, culture and

¹⁷⁶ The Constitution of Kenya, 2010, art. 60.

heritage.¹⁷⁷

REFORMING THE FUTURE WE WANT: FROM BUEN VIVIR TO BUENOS CONVIVIRES

“*Buen vivir*” is a Spanish concept which literally finds its life breath within the philosophy of “living well”. Although no universal definition of *buen vivir* has been attained yet, it has four commonly constitutive elements:

- The idea of harmony with nature, which includes its abiotic components;
- Vindication of the principles and values of marginalised/vulnerable people;
- The State as guarantor of the satisfaction of basic needs including health, social and environmental justice, equality and right to information and right of participation; and
- Democratic approach in problem mitigation.

The concept of *buen vivir* is an alternative philosophy to economic development oriented approaches, generally defined as forming part of the Andean indigenous cosmology, based on the belief that wellbeing in true sense is only possible as part of a community/society. In the broader sense, including people, nature and Earth, intertwined by mutual responsibilities and obligations, and that the wellbeing of the community is greater than that of the individual. The Rio+20 summit held in 2012 at the Rio de Janeiro in Brazil, came out with a very important document known as “The Future We Want” which envisioned a future that is socially, economically and environmentally sustainable for the present generation on planet and for the generations to come. When we envision “living well” or a “good life” it cannot be singular, it is rather a pluralistic philosophy that embraces “living well together” or “*buenos convivires*”. In most of the indigenous communities, the concept of the modern twenty-first century development does not exist. A concept of development or a sense of self-fulfilment which is either materialistic or is based on accumulation of wealth. This ideology of development classifies the society in rich and poor. The concepts of *buen vivir* or *buenos convivires* in the

¹⁷⁷ The Constitution of Kenya, 2010, art. 63.

context of indigenous communities refer to living in harmony with other people and with the nature. The Peoples' Climate Summit held in 2010 at Cochabamba in Bolivia, has already incorporated the philosophy of buen vivir. For [Catherine Walsh](#), a professor at Ecuador's Universidad Andina Simón Bolívar, Buen Vivir:

“... denotes, organises and constructs a system of knowledge and living based on the communion of humans and nature and on the spatial-temporal-harmonious totality of existence. That is, on the necessary interrelation of beings, knowledges, logics and rationalities of thought, action, existence and living. This notion is part and parcel of the cosmovision, cosmology, or philosophy of the indigenous peoples of Abya Yala but also, and in a somewhat different way, of the descendents of the African diaspora.”

Indigenous communities are an integral part in the development of society. Their knowledge is indispensable for growth and betterment of the human clan.

A STUDY ON THE SOCIAL AND ECONOMIC REALITIES OF MIGRANT WORKERS IN KERALA'S UNORGANIZED SECTOR

- MALAVIKA PT¹⁷⁸

ABSTRACT:

This research paper explores the multifaceted experiences of migrant workers within the unorganized sector of Kerala, focusing on their legal rights protection, educational access, living conditions, and positive and negative experiences at workspace. The study examines the dynamic differences between local and migrant workers, assessing disparities in work conditions and social integration. Additionally, it evaluates the living conditions of migrant workers and their significant contributions to Kerala's economy. Utilizing a combination of qualitative and quantitative methods, including interviews with workers and employers, as well as an analysis of existing literature and reports, the research highlights systemic challenges and gaps in legal protections, and offers insights into the socio-economic impacts of migrant labor. The findings aim to inform policymakers and stakeholders about the needs and contributions of migrant workers, advocating for improved legal frameworks, enhanced educational and housing support, and greater recognition of their economic role.

Key Words:

Unorganised sector, Migrant labours, Legal Protection, Socio-economic impact, Living conditions.

INTRODUCTION:

Kerala, a state renowned for its progressive social policies, has witnessed a significant influx of migrant workers in recent decades. These individuals, primarily from other Indian states, form an integral part of the state's unorganized sector, contributing substantially to its economic growth.

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However, their experiences within this sector are often characterized by vulnerabilities, disparities, and limited access to legal protections. This research paper delves into the multifaceted lives of migrant workers in Kerala's unorganized sector, examining their legal rights, educational opportunities, living conditions, and overall experiences in the workplace.

By exploring the dynamic differences between local and migrant workers, this study aims to shed light on the disparities that exist in terms of work conditions, social integration, and access to resources. Furthermore, it investigates the living conditions of migrant workers and their substantial contributions to Kerala's economy. Through a combination of qualitative and quantitative research methods, including interviews, literature reviews, and data analysis, this paper seeks to understand the systemic challenges faced by migrant workers and offer recommendations for policy improvements.

OBJECTIVES:

Primary objectives:

1. Assess socio-economic conditions: Examine income, living standards, and access to services.
2. Investigate legal rights and protections: Explore awareness, enforcement, and access to legal assistance.
3. Evaluate workplace experiences: Examine conditions, wage theft, harassment, and discrimination.
4. Analyze impact of migration: Consider social integration, remittances, and quality of life.

Secondary objectives:

1. Compare experiences from different regions and backgrounds.
2. Examine the role of NGOs and legal aid organizations.
3. Evaluate local authority policies and practices.
4. Identify areas for policy improvement.

LIMITATIONS OF THE STUDY

The study's limitations include the small sample size of 100 participants, which may limit the generalizability of findings to the entire population of migrant workers in Kerala. Additionally, the study's cross-sectional design, regional variations, the diversity of the unorganized sector, the risk of unreported or unacknowledged experiences, and potential challenges related to language and cultural barriers may also affect the findings. Acknowledging these limitations strengthens the credibility of the research and provides a more nuanced interpretation of the results.

METHODOLOGY:

Primary data was collected through a combination of personal interviews and structured questionnaires. Semi-structured interviews allowed for in-depth exploration of participants' experiences, while questionnaires provided a standardized framework for data collection and analysis. Ethical principles were strictly adhered to throughout the research process, ensuring informed consent and the protection of participant privacy and confidentiality.

RESEARCH GAP:

While existing studies have explored various aspects of migrant workers' experiences in Kerala, there remains a need for more in-depth research on the long-term impacts of migration on individuals and their families, particularly in terms of health, education, and economic well-being. Additionally, the specific vulnerabilities faced by female migrant workers, the role of technology in their lives, and the effectiveness of government policies and programs in addressing their needs are areas that require further investigation.

RELATED LEGISLATIONS:

- The Indian Constitution provides fundamental rights and protections to all citizens, including migrant workers. While there is no specific provision directly addressing migrant workers, several articles indirectly relate to their welfare and rights
- The Inter-State Migrant Workmen (Regulation of Employment & Conditions of Service) Act, 1979: This act provides for the regulation of employment and conditions of service

for interstate migrant workers, including provisions for minimum wages, working hours, and welfare measures.

- The Minimum Wages Act, 1948: This act sets minimum wages for workers in various industries and occupations, including those in the unorganized sector.
- The Contract Labour (Regulation and Abolition) Act, 1970: This act regulates the employment of contract labor, which is often used in the unorganized sector.
- The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996: This act provides for the regulation of employment and conditions of service for construction workers, who are a significant part of the unorganized sector in Kerala.
- The Kerala Unorganized Workers Social Security Board Act, 2008: This state-specific act provides for social security benefits for workers in the unorganized sector, including pensions, medical care, and maternity benefits.

SCHEMES:

- Migrant Welfare Policy (2010): This policy provides comprehensive welfare measures for migrant workers, including healthcare, education, housing, and financial assistance.
- Awas Insurance Policy (2017): This policy provides insurance coverage for migrant workers in case of accidents or death.
- Apna Ghar Residential Scheme (2019): This scheme aims to provide affordable housing for migrant workers.
- Hamara Malayalam Programme: This flagship program provides language training and cultural orientation to migrant workers.
- Inter-State Migrant Workers Welfare Scheme: This scheme offers healthcare assistance, financial aid in case of accidents or death, and educational support for the children of migrant workers.



<https://www.thehindu.com/opinion/op-ed/an-inclusive-social-policy-for-migrants/article67046798.ece>

The Inter-State Migrant Workers Welfare Scheme

This comprehensive scheme offers a range of benefits to migrant workers from other states in Kerala:

- Healthcare assistance: Up to Rs. 25,000 for inpatient care in empanelled hospitals.
- Financial aid: Up to Rs. 25,000 for accidents or chronic diseases leading to incapacitation for over six months.
- Death benefits: Rs. 10,000 for natural death and additional assistance for transportation of the body to the native place.
- Educational support: Rs. 3,000 per annum for children studying beyond Class X. To avail

of these benefits, migrant workers need to:

1. Register with the Kerala Construction Workers Welfare Fund Board.
2. Obtain a membership card.
3. Submit necessary documents, such as proof of identity, address, and employment.

NGOs WORKING WITH MIGRANT WORKERS OF KERALA:

- Centre for Indian Migrant Studies (CIMS): CIMS is a Kerala-based NGO that focuses on safeguarding the rights of migrant workers. They provide legal aid, awareness campaigns, and support services to migrant workers.

<https://cimskerala.org/#:~:text=Welcome%20to%20CIMS,the%20rights%20of%20migrant%20workers.>

- Migrant Assistance and Information Network (MAIN): MAIN is a national NGO that works to protect the rights of migrant workers across India, including those in Kerala. They provide assistance with legal issues, healthcare, and social welfare.

<https://mainindia.org/>

- Disha Foundation: Disha Foundation is a Kerala-based NGO that works to improve the lives of marginalized communities, including migrant workers. They provide education, healthcare, and livelihood support programs.

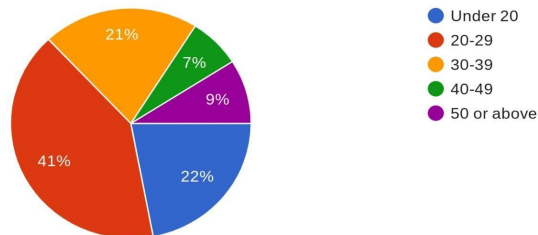
<https://www.dishafoundation.ngo/>

- KISMAT (Kerala Interstate Migrants Alliance for Transformation): KISMAT is a flagship project of BREADS Bangalore that operates migrant help desks in Kerala to protect and uphold the rights of interstate migrant laborers.

<https://www.dbsnehabhavan.org/kismat/#:~:text='KISMAT'%2C%20which%20stands%20for,in%20the%20district%20of%20Ernakulam.>

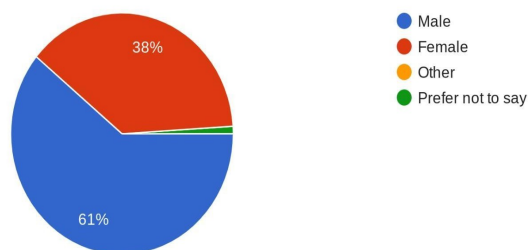
FINDINGS AND SUGGESTIONS:

Age
100 responses



The age distribution of migrant workers in this study reveals a predominantly young population. The largest age group is 20-29, comprising 41% of the sample. This suggests that young adults form the majority of migrant workers in the unorganized sector of Kerala. The second and third largest age groups are below 20 (22%) and 30-39 (21%), respectively. While there are some older workers (7% aged 40-49 and 9% aged 50+), the majority of migrant workers are under the age of 40.

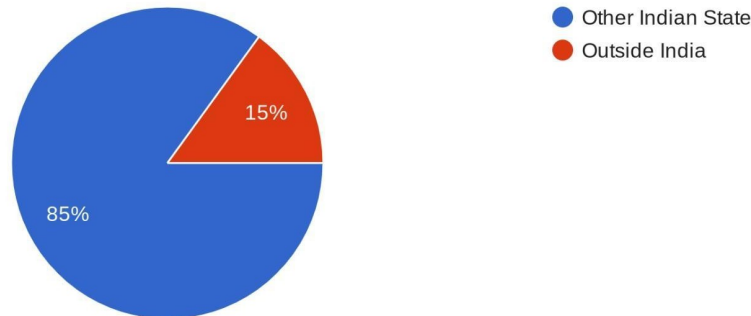
Gender:
100 responses



The gender distribution of migrant workers in this study shows a clear male majority, with 61% of respondents identifying as male. Females account for 38% of the sample. A small percentage (1%) did not specify their gender. These findings suggest that male migrant workers are more prevalent in the unorganized sector of Kerala, although a significant number of women are also engaged in this type of work.

Place of Origin:

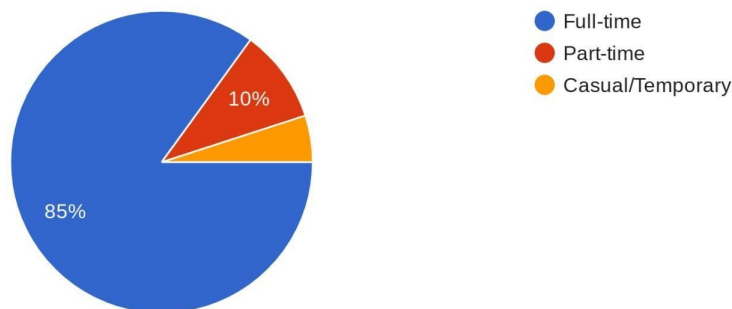
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The majority of migrant workers in this study (85%) originate from other Indian states, indicating a significant level of domestic migration. Only 15% of respondents are from outside India. This suggests that Kerala primarily attracts migrant workers from within the country, likely due to factors such as economic disparities, job opportunities, and cultural similarities.

Type of Employment

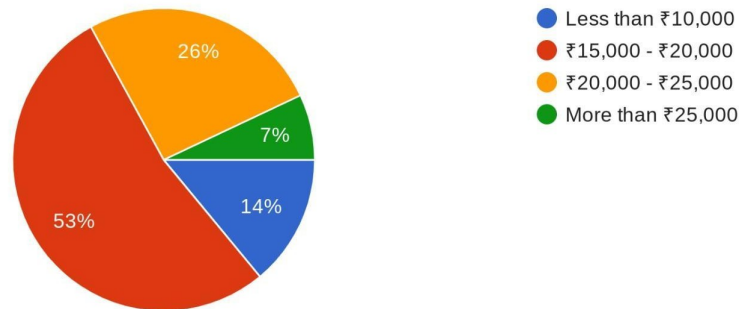
100 responses



The majority of migrant workers in this study (85%) are engaged in full-time employment, indicating a significant commitment to their jobs. A smaller proportion (10%) work part-time, while only 5% are employed on a casual or temporary basis. These findings suggest that full-time employment is the most common type of work arrangement for migrant workers in the unorganized sector of Kerala, although a portion of the population may have more flexible or temporary work arrangements.

Monthly Income (approximate)

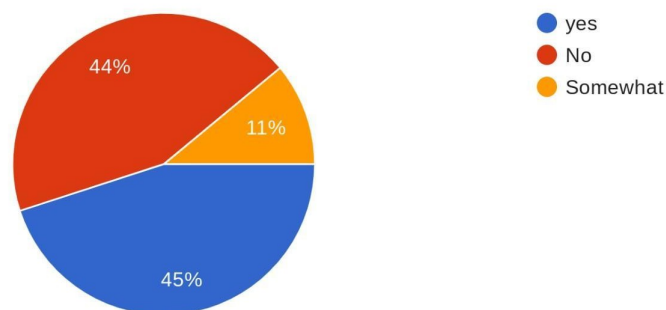
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The monthly income distribution of migrant workers in this study reveals a diverse range of earnings. Only 7% of the population earns above 25,000. The most common income bracket is 15,000 to 20,000 rupees that is 53%, followed by 20,000 to 25,000 rupees 26%. While a significant portion of migrant workers earn decent wages, 14% earn less than 10,000 rupees per month, indicating a need for further efforts to improve income levels and reduce income inequality within this vulnerable population.

Are you satisfied with your current wages?

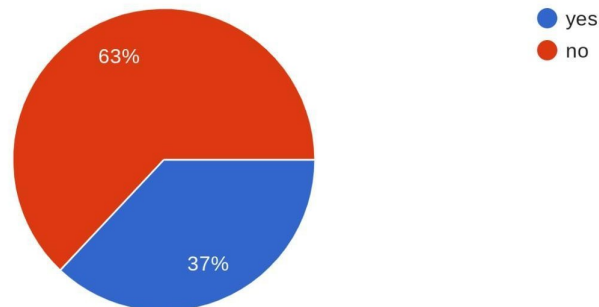
100 responses



The level of satisfaction with wages among migrant workers is mixed. While 45% of respondents expressed satisfaction with their earnings, a significant portion (44%) reported dissatisfaction. An additional 11% indicated a somewhat neutral stance. These findings highlight a disparity between the wages earned by migrant workers and their expectations or perceived needs. Further research is needed to understand the factors contributing to this dissatisfaction and explore potential solutions to improve wage levels and working conditions.

Have you experienced any wage theft or non-payment of wages?

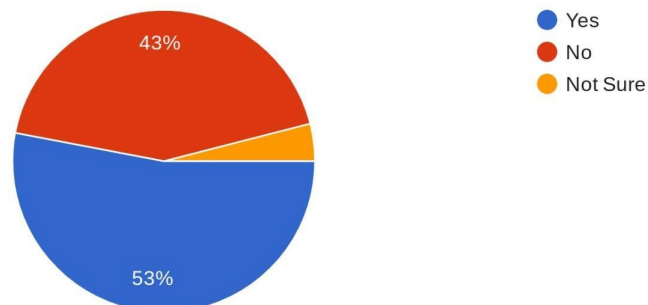
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A significant portion of migrant workers (37%) reported experiencing wage theft. This suggests that wage theft is a prevalent issue in the unorganized sector of Kerala. However, 63% of respondents did not report experiencing wage theft, indicating that while the problem exists, it is not universal. These findings highlight the need for stronger enforcement of labor laws and greater awareness among migrant workers of their rights and avenues for reporting wage theft.

Do you have a formal employment contract?

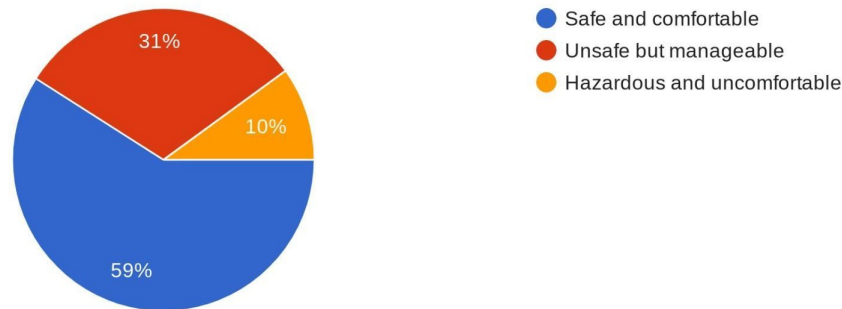
100 responses



A significant portion of migrant workers in this study (43%) have formal employment contracts, indicating a degree of legal protection and job security. However, 53% of respondents do not have formal contracts, suggesting a lack of legal safeguards and potentially vulnerable employment situations. A small percentage (remaining) were unsure about whether they had a formal contract. These findings highlight the need for greater enforcement of labor laws and policies to ensure that migrant workers have adequate legal protections.

How would you describe your working conditions?

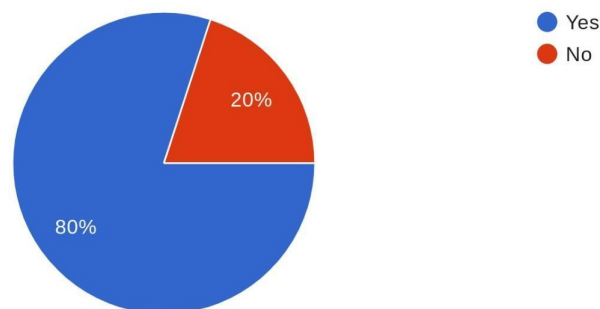
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The perceived safety and comfort of the workplace varies among migrant workers. A majority (59%) feel safe and comfortable in their current jobs. However, a significant portion (31%) report unsafe but manageable conditions, while a smaller group (remaining percentage) considers their workplaces hazardous and uncomfortable. These findings highlight the need for improvements in workplace safety and conditions for a substantial number of migrant workers.

Do you have access to proper protective equipment for your job?

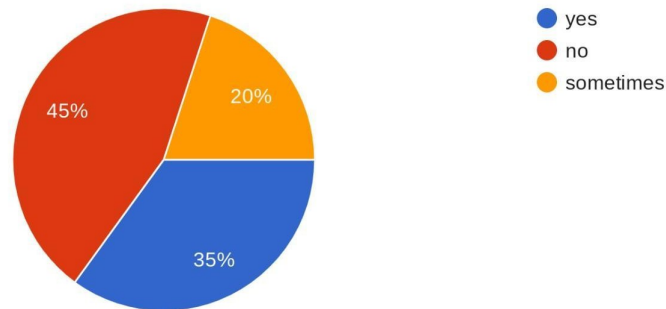
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The majority of migrant workers (80%) reported having access to proper protective equipment for their jobs, suggesting that safety measures are being implemented in many workplaces. However, 20% of respondents indicated a lack of adequate protective equipment, highlighting the need for further improvements in occupational safety and health standards within the unorganized sector.

Have you faced any instances of harassment or discrimination at work?

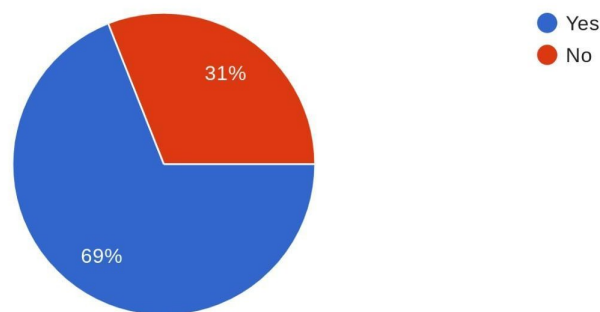
100 responses



A significant portion of migrant workers in this study (35%) reported experiencing harassment or discrimination in their workplaces. This is a troubling indication of the challenges faced by this vulnerable population. While 45% reported not facing such experiences, the remaining respondents indicated that they had experienced harassment or discrimination sometimes. These findings highlight the need for stronger measures to prevent and address harassment and discrimination in the unorganized sector.

Is your work environment free from gender discrimination?

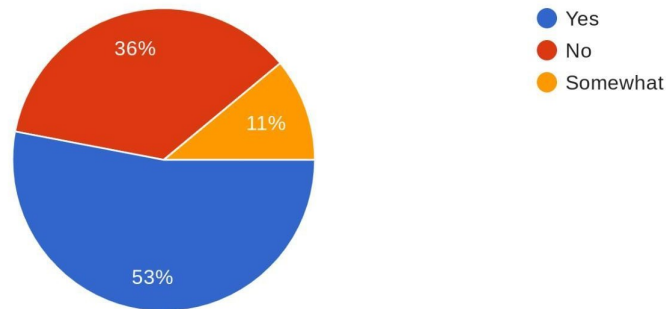
100 responses



The majority of migrant workers (69%) reported that their workplaces are free from gender discrimination. However, a significant minority (31%) indicated that they have experienced discrimination. These findings suggest that while progress has been made in promoting gender equality in the workplace, discrimination remains a persistent issue for some migrant workers.

Are you aware of your legal rights as a worker?

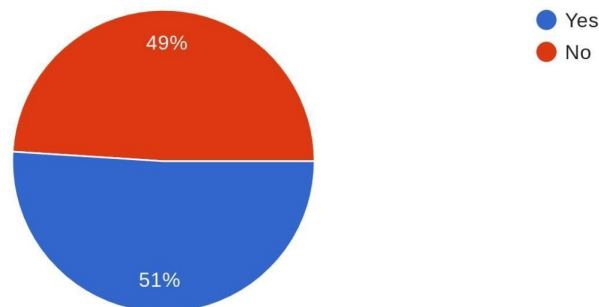
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A significant portion of migrant workers (53%) are aware of their legal rights, indicating a growing understanding of their entitlements. However, 36% are unaware of their rights, highlighting a need for increased awareness campaigns and education initiatives. This finding underscores the importance of providing migrant workers with information about their legal protections and avenues for seeking redress.

Have you sought assistance from any NGOs or legal aid organizations regarding your rights?

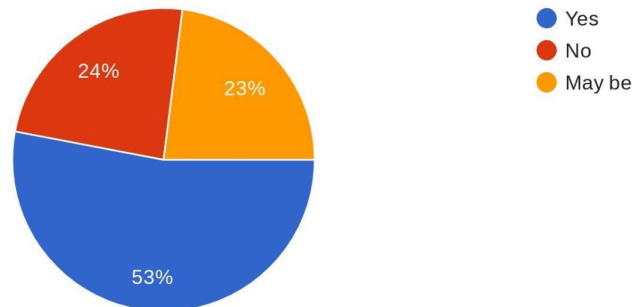
100 responses



A significant portion of migrant workers (51%) have sought assistance from NGOs or legal aid organizations regarding their rights. This suggests that a considerable number of workers are aware of their rights and are actively seeking support to protect them. However, 49% have not sought such assistance, indicating a need for increased awareness and accessibility of these services.

Do you feel that local authorities effectively enforce workers' rights and protections?

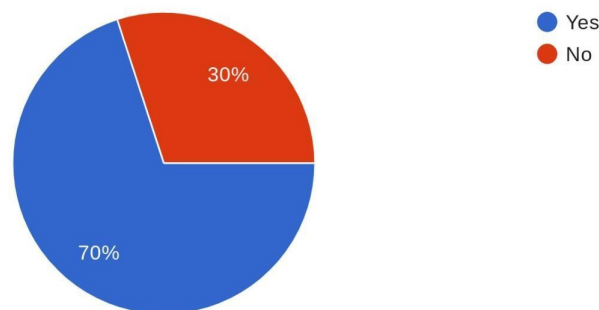
100 responses



Regarding the enforcement of workers' rights and protections, a majority of migrant workers (53%) expressed satisfaction with the efforts of local authorities. However, 24% felt that enforcement was inadequate. The remaining 23% were undecided or did not have a strong opinion on this matter. These findings suggest that while a portion of migrant workers feel their rights are being adequately protected, a significant number perceive gaps in enforcement or are unsure about the effectiveness of local authorities in this regard.

Do you have access to affordable housing?

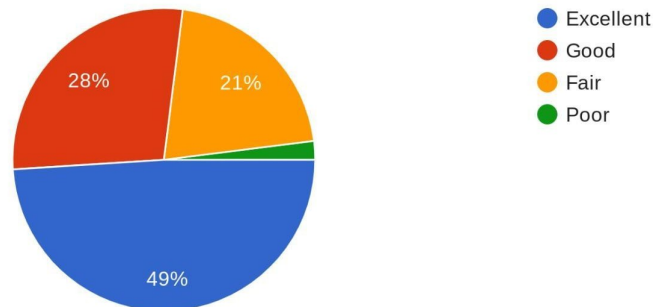
100 responses



Regarding access to affordable housing, a majority of migrant workers (70%) indicated that they have found suitable housing. However, 30% reported difficulty in finding affordable housing, suggesting that housing remains a significant challenge for a portion of the migrant population in Kerala. This finding highlights the need for increased efforts to provide affordable housing options for migrant workers, especially in urban areas where housing costs are typically higher.

How would you rate your access to healthcare services?

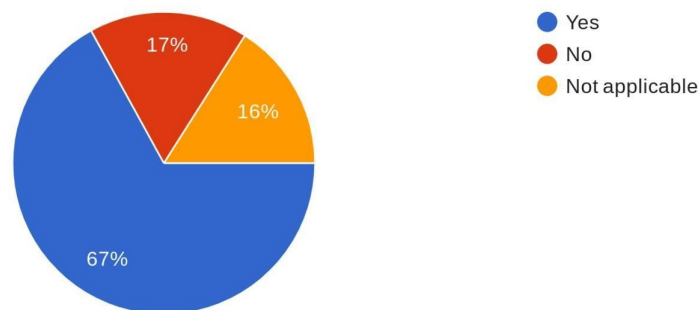
100 responses



Regarding access to healthcare services, a majority of migrant workers (49%) rated their access as excellent, indicating a positive perception of the available healthcare options. However, 28% rated their access as good, suggesting that some improvements could be made. A smaller percentage (21%) rated their access as fair, while a few (2%) deemed it poor. Overall, these findings suggest that while a significant portion of migrant workers are satisfied with their access to healthcare, there is still room for improvement in certain areas.

Are there educational opportunities available for you or your children?

100 responses



Regarding educational opportunities, a majority of migrant workers (67%) indicated that they or their children have access to education. However, 17% reported a lack of educational opportunities. The remaining 16% either did not have children or did not provide an answer to this question. These findings suggest that while a significant number of migrant workers have access to education, a portion of the population may face challenges in this area, potentially impacting their children's future prospects.

"The recent news of a Bengal migrant worker's daughter securing all A+ grades in the Kerala SSLC exam serves as a powerful example of the educational potential of migrant children and the positive impact of supportive policies and initiatives in Kerala."

Daughter of Bengal migrant workers breaks language barrier to secure all A+ grades in Kerala SSLC exam

A native of Murshidabad in West Bengal, Khatun scored A+ grades in all subjects including Malayalam. Also, she is the first and only student to secure all A+ grades in the history of NGO Quarters Government HSS in Kozhikode district in Kerala.

Written by Haritha K P

Kozhikode | July 16, 2021 19:46 IST

NewsGuard

🕒 4 min read



<https://indianexpress.com/article/india/kerala/daughter-of-bengal-migrant-workers-all-a-grades-kerala-sslc-exam-7408242/>

RESULTS:

The study revealed a diverse population of migrant workers in Kerala's unorganized sector, with a majority (85%) originating from other Indian states and primarily engaged in full-time employment (85%). The most common age group among migrant workers was 20-29 (41%), followed by below 20 (22%) and 30-39 (21%).

Regarding income, the majority of migrant workers earned between 15,000 and 20,000 rupees per month (53%), although a significant portion (14%) earned less than 10,000 rupees. In terms of gender, males were more prevalent (61%), but a substantial number of female migrant workers were also present (38%).

The study also explored access to essential services. A majority of migrant workers (67%) reported having access to education for themselves or their children, while 49% rated their access to healthcare services as excellent. However, significant gaps were identified in these areas, with 17% lacking educational opportunities and 21% rating their healthcare access as fair or poor.

Regarding the enforcement of workers' rights and protections, a majority of migrant workers (53%) expressed satisfaction with the efforts of local authorities. However, 24% felt that enforcement was inadequate, highlighting the need for improvements in this area.

CONCLUSION:

This study has delved into the multifaceted experiences of migrant workers in the unorganized sector of Kerala, shedding light on their socio-economic conditions, legal rights, and access to essential services. The findings reveal a complex picture, highlighting both the challenges and opportunities faced by this vulnerable population.

While a significant portion of migrant workers have found employment in the unorganized sector, the study underscores the need for improvements in working conditions, wages, and access to social safety nets. Despite the challenges, many migrant workers have demonstrated resilience and determination, contributing significantly to the economic growth of Kerala.

To address the pressing issues faced by migrant workers, it is imperative to strengthen enforcement of labor laws, expand access to healthcare and education, and promote social integration. By implementing targeted policies and initiatives, Kerala can create a more equitable and inclusive environment for migrant workers, ensuring that their contributions are recognized and valued.

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LEGAL CHALLENGES IN COMBATING CYBER CRIMES: A CRITICAL ANALYSIS

- NISHITA BHULLAR¹⁷⁹ & DR. PUJA PAUL SRIVASTAVA¹⁸⁰

INTRODUCTION

It's changing humans' lives, behaviour, or trade activities in the digital age. The invention of the internet, mobile, and complex computing technologies greatly propelled societies into the worldwide connectivity and global digitization. Recently, this digital revolution is going faster in India, where government initiatives like Digital India work to convert the country into a digitally empowered society and knowledge economy. However, this has laid benefits and efficiencies in its way of life and exposed individuals, corporations, and governments to unprecedented vulnerabilities.¹⁸¹ Cyber-crimes refer to conditions or events in which computers and networks become a source or target for committing crimes or unlawful activity activities. Thus, cyber-crimes are the key legal and security issues today. The possible forms of cybercrimes are data breaches, financial fraud, cyber bullying, and ransom ware; the scope keeps growing. Cyber-crime is beyond the borders for geo selling its detection, investigation, and prosecution. Despite legislative efforts to catch up, the legal system of India is not catching up with the rapidly changing faces of cyber threats but instead leaving a large enforcement gap. Unique nature of cyber-crime in exploiting anonymity and borderless cyberspaces has now rendered the crime as one where the offenders are located in different jurisdictions from their victims, making assignment of responsibility and legal accountability difficult. The increasingly sophisticated and resourceful nature of cyber criminals using encryption, VPNs, dark web technologies, etc., also makes effective enforcement of laws more complicated. As digital systems increasingly provide basic services like banking, healthcare, education, and governance, the impact of cyber-attacks is profound on individual rights, national security, and economic stability.¹⁸²

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¹⁸⁰ Associate Professor at Centre for Legal Studies, GIBS, Rohini

¹⁸¹ Susan W Brenner, *Cybercrime and the Law: Challenges, Issues, and Outcomes* (Routledge 2012)

¹⁸² Ishan Atrey, 'Cybercrime and its Legal Implications: Analysing the Challenges and Legal Frameworks Surrounding Cybercrime, Including Issues Related to Jurisdiction, Privacy, and Digital Evidence' (2023) 10 *Journal* 183

Growth of Digital Age

There was digital transformation in diverse spheres of human life at the dawn of the twenty-first century, where internet usage was now becoming ubiquitous. India, with its vast populous middle class, is among the largest countries using digital technologies.¹⁸³ As of 2024, more than 850 million Indians are online and getting digital services available in remote and rural areas. Although these services democratized access to information and services, they nevertheless made the populace more vulnerable to cyber threats. There is a positive relationship between the increase of cyberspace and the increase in cyber-crime in India. Cyber-crimes in India have advanced tremendously in the past decade as per the reports of NCRB records. The most prevalent among such crimes were financial fraud, identity thefts, and cyberstalking. It also accelerated the online platforms for work, education, and commerce, which also set off a tide of cyber-attacks upon unguarded users and organizations. During the crisis, cyber criminals launched phishing scams, ransomware attacks on hospitals, and impersonation frauds, exposing gaps in digital security and law enforcement preparedness. Change is constant in cyber-crime; it is evolving all the time. New forms of crimes, traditional crimes are now becoming digitalized. Incidents of defamation, extortion, and harassment, in addition, will now take place as follows: on social media platforms, on messaging applications, on private emails. New types of crime have emerged, such as crypto-jacking, deepfake frauds, reporting the evolving nature of crime in cyber space. Rapid technical understanding and response from the legal system are often required to capture the real-time nature of these new threats, which the existing legal frameworks, meant essentially for an analogy age, are ill-equipped to provide.

Increasing Dependency on Technology and Vulnerability to Cyber Threats¹⁸⁴

Modern society's increasing dependence on technology has largely conversely, impugned itself in the light of increased threats present in cyberspace. The digitization of any kind of transaction-whether it be for financial gain, government services, or private communications-means that a small lapse in security can lead to monumental data leaks and financial losses with the resultant erosion in public confidence. With examples, the proliferation of the Unified

¹⁸³ IALM, 'Cybercrime in India: Legal Hurdles and Challenges' (IALM Academy, 22 July 2021) <https://ialm.academy/blog/cybercrime-in-india-legal-hurdles-and-challenges> accessed 14 April 2025.

¹⁸⁴ Sumit Ghosh and Elliot Turrini, *Cybercrimes: A Multidisciplinary Analysis* (Springer 2014)

Payments Interface (UPI), mobile wallets, and online banking in India has made financial systems an ever-lucrative target for hackers. The other end of the spectrum is presented by the Aadhaar-linked schemes that keep a huge repository of personal information about individuals on the basis of which digital IDs get issued. A successful cyber breach pose serious threats to these platforms with respect to privacy. There is no end to protect institutions. Critical infrastructure, like power grids, transportation networks, and healthcare systems, are ever so increasingly connected to the internet and thus exposed to cyber espionage and sabotage. Ransomware attacks on hospitals and universities occurring in India have put forth serious concerns over preparedness and the pressing need for a comprehensive framework for cybersecurity. The presence of IoT and AI in itself increases the difficulty for any kind of legislation because whatever laws have been framed may not strictly account for such systems' autonomous and interconnected behaviour. More importantly, being vulnerable to cyber-crimes is much more than just a technological concern-it is a very legal and regulatory one. In addressing this matter, the legal mechanism must be such as to tether down cyber criminals, placate victims, regulate digital platforms, and further the interests of digital rights. In any case, cyber law in India, which is predominantly motivated by the Information Technology Act, 2000, is considered outdated, loaded with vague definitions, and devoid of procedural clarity. Enforcement agencies, as a matter of fact, find themselves under-trained and ill-equipped to tackle the highly sophisticated threats, and a significant gap continues to persist between the pace of advancement of technology and the adaptability of the law.¹⁸⁵

The menace of cyber-crime needs a proliferation of approaches, firmly rooted in multi-disciplinarity, involving legal reform, institutional capacity building, technological adjustability, and international cooperation. The legal system must evolve to address not only the criminalization of new forms of digital misbehaviour but also to ensure procedural justice, data protection, and rights-based governance in cyberspace. This research paper aims to look into these legal challenges in depth, critically assesses the ability or otherwise of the existing laws, speaks to institutional impediments, and proffers policy recommendations so that India's

¹⁸⁵ Ajoy PB, 'Effectiveness of Criminal Law in Tackling Cybercrime: A Critical Analysis' (2022) 5(2) *Scholars International Journal of Law, Crime and Justice* 74

response to cyber-crime may be capitalized upon.¹⁸⁶

INDIAN LEGAL FRAMEWORK

In the contemporary time, cyber-crime has turned out to be one of the crucial parts really demanding research or work on effective detection and differentiation from other crimes, as it covers almost all aspects of unlawful activity associated with the medium of computers, computer networks, and digital devices.¹⁸⁷ While most crimes would usually occur in a specific geographic location, a cyber-crime can be committed all over the world, often without physical evidence. The evolution of cyber-crime has come along with technological advancements and now includes crimes where the computer serves as a central focus or where it is only a tool. Cyber-crime has a broad definition in the Information Technology Act, 2000 and covers offences involving misuse of computers, computer systems, or electronic devices. Data theft, cyber terrorism,¹⁸⁸ online defamation, and accessing unauthorized computer networks are some typical illegal categories under this act.

Hacking among others has drawn more people's attention, as it constitutes the most popular type of cybercrime. It's an unauthorized access to a computer system with the aim of stealing, manipulating, or destroying the data, and it leads to the most serious repercussions- data breaches and monetary loss. Phishing tricks are attempts used to acquire sensitive information about passwords, credit card numbers, or other identification by masking as a trustworthy source in electronic communications. Identity theft usually means acting or impersonating someone else using their information without consent for conducting fraud or taking other illegal benefits. Cyber stalking has also become another crime that has quickly flown among the many electronic forms of threats harassing or intimidating someone using electronic communications generally, with women¹⁸⁹ and minors being highly targeted. Came comprised sending threatening messages, tracking digital footprints, or disseminating information online concerning content to which the victim did not consent. The highest form of cyber-crime is cyber terrorism since it

¹⁸⁶ Anita Singh, Pradeep Kulshrestha and Ritu Gautam, *Cyber Crime, Regulations and Security - Contemporary Issues and Challenges* (2022) ISBN 978-81-956533-0-0

¹⁸⁷ Suresh T Viswanathan, *Bharat's The Indian Cyber Laws with Cyber Glossary* (Bharat Law House 2001)

¹⁸⁸ Babak Akhgar, Andrew Staniforth and Francesca Bosco, *Cyber Crime and Cyber Terrorism Investigator's Handbook* (Syngress 2014)

¹⁸⁹ Debarati Halder and K Jaishankar, *Cyber Crimes Against Women in India* (SAGE Publications India 2017)

intends damage, panic, or disruption into national security through computer networks or systems that are assailed. The offenses of cyber terrorism can include the assaulting or crippling of critical infrastructures such as transportation systems, defence networks, or financial markets, proving this to be of utmost concern for law enforcement and policy makers.

Indian Law has therefore evolved a whole range of legal enactments to deal with the multifaceted offences of information processes at the Information Technology, 2000 (IT Act) level, the primary legislation dealing with cyber-crime. It serves as the basis for providing meaningful legal sanctity to electronic commerce and digital signatures and outlines various offences along with their penal sanctions. The amendments regarding the inclusion of a number of offences concerning cyber terrorism (Section 66F), identity theft (Section 66C), and violation of privacy (Section 66E)-and the publication or transmission of sexually explicit content (Section 67A and 67B)-into the Act have significantly enlarged the scope of the IT Act. The Act also provides for intermediary liability under Section 79, which was central to legal debates relating to accountability of platforms. However, while the IT Act provides some foundational elements for cyber law in India, it is yet not procedural in clarity nor sufficiently responsive to the changing faces of technology in crimes.

The Indian Penal Code (IPC), often described as heavy artillery in the works with cybercrimes that bear the characteristics of the traditional criminality, complements the IT Act. Within the IPC, there are constant references to Sections such as Section 419 (cheating and impersonation); Section 463 (forgery); Section 499 (defamation); and Section 506 (criminal intimidation). These often find application in cyber-crime cases, particularly for online fraud, cyberbullying, and cyber defamation cases. Therefore, the IPC acts in aid where cybercrimes intersect with conventional crimes. The IPC works in an imaginative way or creatively, drawing a pattern of actual interpretation or application that leads to awkwardness in cybercrime. Whatever the 'letter of law' works, it adds a little to the obvious will and intent in any law.¹⁹⁰

In the year 2023, India enacted the DPDP Act, a significant milestone toward data privacy and

¹⁹⁰ Abraham D Sofaer and Seymour E Goodman (eds), *The Transnational Dimension of Cyber Crime and Terrorism* (Hoover Institution Press 2001)

regulation of digital data usage.¹⁹¹ It is true that the Act's primary target is data protection, but its implications for the law on cyber-crime cannot be ignored, particularly in matters relating to unauthorized access to personal data, data breaches, and duties for data fiduciaries. It empowers the Data Protection Board to hear complaints and impose penalties for non-compliance. This Act recognizes the rights of individuals to seek redress for infringements of privacy. Nevertheless, critics argue that the DPDP Act lacks an apparent mechanism to enforce criminal offences. It poorly regulates state surveillance and simultaneously overlooks the intersection of a data breach with respect to cyber-crime prosecution. Further legal harmonization between DPDP and the IT Act is required.

The law enforcement of cybercrimes in India is therefore delinked between various authorities. Cyber Crime Cells forming a backbone for policing in states and union territories investigate cyber offences. Their work widely varies from state to state, based on each state's infrastructure, training, and coordination with their counterparts. CERT-In, housed under the Ministry of Electronics and Information Technology, is one of the foremost agencies to coordinate cybersecurity events, issuing advisories, and coordinating response efforts to large-scale attacks. CERT-In has wide-ranging powers, including requesting the disclosure of data and other information from service providers and ensuring compliance for preventive action, especially under Section 70B of the IT Act. However, the lack of cohesion between CERT-In, the local police, and the judiciary tends to create bottlenecks to carry out a thorough investigation and prosecution. Offences are often found to have jurisdictional issues, as the parties involved reside in different states or countries. The absence of a clear delineation of procedural norms regarding cross-border cooperation and the gathering of evidence makes prosecution exceedingly difficult.

How far better the substantial judicial pronouncements have sketched their boundaries around the jurisprudence of cyber-crime in India! In *Shreya Singhal v. Union of India (2015)*¹⁹², the Supreme Court upheld the judgment regarding the invalidation of Section 66A from the IT Act, under which a person was punished for sending any offensive messages through a

¹⁹¹ Abhishek Kumar, Prabhat Deep, Shivam Raghuvanshi and Vivek Kumar, 'India's New Data Frontier: A Critical Legal Insight of the Personal Data Protection Act, 2023' (2024) 44 *Library Progress International* 11776

¹⁹² *Shreya Singhal v Union of India (2015)* 5 SCC 1

communication service. The Court observed that the provision is vague and of a prohibitive nature to the right of freedom of speech under Article 19(1)(a) of the Constitution. The judgment is a victory for digital rights while vacuuming in issues such as the regulation of online hate speech and threats, which are again under consideration. Next, in importance is the judgment in *State of Tamil Nadu v. Suhas Katti (2004)*,¹⁹³ one of the earliest convictions employing the IT Act. The conviction was for a man who posted obscene messages in a Yahoo message group. The man was convicted under Sections 67 of the IT Act and Section 509 of the IPC, where the case of Suhas Katti became a landmark towards recognition of cyber harassment against women. Other important judgments in the above regard are *K.S. Puttaswamy v. Union of India (2017)*¹⁹⁴, where the Supreme Court accepted the right to privacy¹⁹⁵ as a fundamental right under Article 21. While not strictly a cybercrime case, the verdict impacts digital surveillance and data breaches much deeper, as it strengthens the foundation of the constitution for privacy-related cyber-crime litigation. A similar kind of case was *Manik Taneja v. State of Karnataka (2015)*¹⁹⁶, where the court shielded people's expression of grievances through social media and put more emphasis on ensuring a balance between sentencing for cyber-crime and civil liberties.

LEGAL CHALLENGES AND COMPARATIVE ANALYSIS

The Indian legal system presently faces many hurdles concerning the enforcement of cyber laws through a well-defined legal framework as enshrined in the Information Technology Act, 2000 and the allied laws. Cyber criminality is affected by jurisdictional ambiguity, technical shortcomings, evidentiary limitations, or weak global cooperation. These impediments affect the working of the cybercrime enforcement machinery and raise questions regarding the preparedness of the Indian legal system to deal with technology-enabled and transnational crimes.

The conflict of laws occasioned by jurisdiction in cross-border cyber-crime is one of the most disturbing facets of the problem. Cyber-crimes usually arise from one country and adversely affect victims in another, posing differing laws of the land and investigative authorities. Police

¹⁹³ *State of Tamil Nadu v Suhas Katti (2004) 3 Mad LJ 1.*

¹⁹⁴ *K.S. Puttaswamy v Union of India (2017) 10 SCC 1.*

¹⁹⁵ Samuel D Warren and Louis D Brandeis, 'The Right to Privacy' (1890) 4 Harvard Law Review 193

¹⁹⁶ *Manik Taneja & Anr v State of Karnataka & Anr (2015) 7 SCC 423*

jurisdictions in India are in a vast majority of the cases territorial by Code of Criminal Procedure, 1973, which makes the prosecution of crimes committed from foreign turf difficult. The procedure of acquiring evidence or cooperation from foreign jurisdictions is unbearably slow and unreliable, especially in the absence of mutual legal assistance treaties (MLATs) or bilateral agreements of sound strength. If the hacker based in Eastern Europe hacked into the Indian banking server, Indian law enforcement would not be having any other straight route of law for investigation without getting entangled in a maze of diplomatic channels. Furthermore, many global technology firms store user data in servers situated outside India, compounding the accessibility of relevant evidence. This results in jurisdictional delays but also, with procedural bottlenecks, causes victims to be denied justice.

Additional hindrance to this is the lack of technical knowledge and investigative capability in law enforcement for implementing cyber laws in India. While some of the metropolitan cities have cyber-crime units, the extent of these units is very unevenly distributed across the country. Other cities may have limited staffing or poorly trained officers in cyber forensics, encryption technologies, blockchain analysis, or deep web tracking. This frequently results in problems like mishandling of digital evidence, delayed responses to cyber incidents, or simply hinder effective tracing of the offender. Even this new area of the Indian judiciary appears to be straining to catch up with technological issues. The problem for the justice system significantly grows due to the growing use of anonymization techniques and algorithms exploited by cyber criminals. The absence of coordination between CERT-IN, local cyber cells, and other law enforcement agencies further depletes national cyber defence capabilities.

Another big hindrance is that, under the fact-a probation challenges¹⁹⁷ of evidence from digital records. The Indian Evidence Act, 1872 states that electronic records qualify to enter the courts of law if they satisfy the requirements of Section 65B. However, under these conditions, it requires the presentation of a certificate from the person who had control over the digital device or server. This is an impossibility in many cases, such as where the data is with third-party intermediaries beyond India or when devices have been compromised. There are no uniform standards or procedures for collection, preservation, and analysis of digital evidence by

¹⁹⁷ Ahmet Nuredini, 'Challenges in Combating the Cyber Crime' (2014) 5 *Mediterranean Journal of Social Sciences*

investigation authorities. Digital records have been the cause of benami acquittals or the prolongation of litigation because of the judiciary's expression of concerns on these records times without number. The value of proof of electronic evidence is also most complicated by the risk of data tampering, deepfake technologies, and digital manipulation of the metadata.

Another associated legal concern is the lack of definitions within legislation and the gaps in existing cyber laws. The Information Technology Act, 2000 has been modified to bring in recent crimes like cyber-terrorism and identity theft. Yet no mention of definitions is given for developing offences such as cryptojacking and breach of data, deepfake pornography, and synthetic identity fraud. Besides this, it lacks a skewed penalty system between minor and more severe cybercrime. The Act also talks about algorithmic bias and has withheld provisions for matters such as cyber insurance and liability for autonomous digital agents. For such loopholes in legislation, both victims and enforcement agencies are left in a haze over possible legal remedies, while offenders revel in the potentialities of grey areas in the law.¹⁹⁸

Not having strong bilateral cooperation mechanisms is yet another fundamental hindrance. By their nature, cybercrimes are global, and effective enforcement requires timely availability of data, extradition of offenders, and conformity of legal standards. India is not one of the signatories to the Budapest Convention on Cybercrime, the only binding international treaty dealing with criminal activities that are affected by the Internet. Even as concerns about sovereignty and data privacy have disallowed India from signing the convention, this absence in itself greatly hampers the bargaining power of India within the international cyber law arena. Without international binding frameworks, Indian investigators often have to endure long waits before they can access electronic records or trace the whereabouts of accused individuals on foreign soil. Informal cooperation, either through Interpol or through diplomatic channels, tends to be sluggish and inefficient, leading to highly disappointing conviction rates.

Comparative analysis has, however, shown examples in other jurisdictions, such as the USA, EU, and Singapore, that India can learn from. The United States has very solid cybercrime enforcement under its federal statutes, especially what is offered in the Computer Fraud and

¹⁹⁸ Dharminder Kumar and others, 'Combating Cybercrime: An Analysis of National and International Legal Mechanisms' (2023) 44(6) *Tuijin Jishu/Journal of Propulsion Technology*.

Abuse Act (CFAA) and Electronic Communications Privacy Act (ECPA). These three laws combined define the offenses it covers well, offer severe penalties, and give investigative tools like surveillance warrants, to say nothing of the well-trained cyber units found within the FBI and the Department of Justice. Furthermore, multiple bilateral treaties exist through which the American government can provide mutual legal assistance in addition to data exchange, thereby adding to their capability in dealing with cross-border crimes.

The European Union occupies a ground rights and harmonised approach by instruments such as the General Data Protection Regulation (GDPR) and the EU Cybersecurity Act. Such laws provide obligations to data processors besides protecting the users from regulatory oversight and penalties. Besides this, the EU has created an agency within its fold called the European Union Agency for Cybersecurity (ENISA), charged with coordination of cyber resilience initiatives across member nations. Of significance, the EU member states are also members of the Budapest Convention, thus boosting the collective capacity for international legal cooperation.

Singapore is often touted as a model of efficient governance and serves well as a study in cyber law enforcement. Singapore's Cybersecurity Act, 2018, along with the Computer Misuse and Cybersecurity Act (CMCA), clearly stipulate the law in how it applies to modern technology in action by one central agency, the Cyber Security Agency of Singapore (CSA). The country also has put in place much more that includes public-private partnerships, solid capacity building efforts, and mandatory reporting of cybersecurity incidents.¹⁹⁹ These elements make for a well-rounded proactive and resilient cybercrime framework. India can learn quite a few lessons from these jurisdictions, firstly upgrade and unify definitions of cyber-crimes in legislation with the current global standards. Next, India should invest in institutional capacity development through cyber courts at central level, compulsory cyber forensics training, and building a digital architecture for law enforcement. The third step is that legal reform must go hand-in-hand with procedural ones important to making the collection of evidence streamlined, international cooperation for the same, and victim redress mechanisms. The remaining aspects of a more extensive national strategy include public awareness campaigns, cyber literacy, and private sector incentives for cybersecurity measures.

¹⁹⁹ A A Khan, 'Reconceptualizing Policing for Cybercrime: Perspectives from Singapore' (2024) 13(4) Laws 44

In an endnote, India's battle against cyber-crimes is crippled by jurisdictional ambiguities, evidentiary bottlenecks, archaic laws, and a lack of international cooperation. The comparative experiences from the US, EU, and Singapore make it clear that a well-coordinated rights-based technologically forward approach improves national cyber resilience to a great extent. Legal reform must be total with respect to institutional modernization and global engagement, and it must be sustained through public-private collaboration. The next and final chapter of this paper will discuss potential solutions and policy recommendations that will furnish a well-rounded roadmap toward strengthening India's cybercrime legal framework.²⁰⁰

CONCLUSION

Cyber-crimes, under a digitalizing India, pose one of the most dynamic and complex threats to an individual, organizations, and national security. The evolution of cyber threats from data breaches and identity theft to ransomware attacks and state-sponsored cyber espionage necessitates not an only strong and responsive framework but also anticipatory one. The Information Technology Act, 2000 is the basis for fighting cybercrimes, but with the rise of even more advanced cyber crimes transcending nations, its weaknesses have become prominent.

As such, the passage of the Digital Personal Data Protection Act in 2023²⁰¹ and the penal provisions surrounding this Act in the Indian Penal Code and Criminal Procedure Code indicate that the legislature is trying to get abreast of technological advancements. Again, the creation of institutional mechanisms like CERT-In and police cyber cells underlines the administrative commitment to the enforcement of cybersecurity. However, the hindrances to effectiveness entailed by the jurisdictional controversy, nonunified implementation, low levels of digital literacy, lack of technical training for enforcing authorities, and a crawling judicial system continue to haunt the existing situation.

²⁰⁰ Abeer Rakesh Wasnik, 'Uncovering the Legal Challenges of Cybercrime in India and the Need for a Specific Legal Framework' (2022) 2(3) *Journal of Legal Research and Juridical Sciences* 1329.

²⁰¹ Saurabh, Shubham, 'The Digital Personal Data Protection Act of 2023: Strengthening Privacy in the Digital Age' (2024) 3 *International Journal of Law in Changing World* 77

In the context of a connected world, locales linked by litigant and defendant are recognized when a foreign body advances its rights against the suspect. Here, evaluations mostly discuss between the fine line of safeguarding the modern values of rights and liberty. Commonwealth intervention, for example in *Shreya Singhal versus the Union of India*, led towards defending these values in cyberspace. This would be following the lack of legislative establishment, enforcement clauses, and digital security throughout the investigation points as due process to be followed.

Cross-border cybercrimes²⁰² and transnational operations further impede enforcement through conflicts on jurisdiction, limited international cooperation, and the absence of universally harmonized setting of legal standards. Despite the adoption of the Budapest Convention on Cybercrime-type frameworks for multilateral partnership, the ratification process faced several hurdles within India, drawing on strategic and legal perspectives. Nonetheless, international cooperation, whether bilateral or multilateral, is crucial for investigating and prosecuting broadly prevalent cyber threats.

In a comparative light with legal regimes in the United States, United Kingdom,²⁰³ and Singapore, India has made good strides while having a significant gap in the implementation of forward legal frameworks, imposing data security regulations, and ensuring institutional capacity. Indeed, countries²⁰⁴ such as Singapore have started on significant legislation and institutional capacity-building projects that could serve as best practices for us in terms of public-private partnerships and real-time advantage.

²⁰² Mohammad Tarek Hasan, 'Cross-Border Cybercrimes and International Law: Challenges in Ensuring Justice in a Digitally Connected World' (2023) 8 IJRDO - Journal of Law and Cyber Crime.

²⁰³ United Nations Publications, *Understanding Cybercrime: Phenomena, Challenges and Legal Responses* (United Nations 2017)

²⁰⁴ Great Britain: Home Office, *Cyber Crime Strategy* (The Stationery Office 2010)