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## Inequality

# How Indian Laws Patronise Working Women, Limit Job Opportunities

**Prisha Saxena and Sirjan Kaur**

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Image Credit: Voxdev.org

Leela had been a binding assistant at the Kerala Books and Publications Society, a state-owned textbook publishing house, for 19 years when she was overlooked for the post of a supervisor. In terms of seniority, she claimed she was eligible for a promotion. However, her employer argued that as a woman, she could not work beyond 7 pm, which she would need to in a supervisory role, under the Factories Act, 1948.

Leela took her grievance to the court in 2004, arguing against the discriminatory nature of Section 66 of the Factories Act. The

Kerala High Court dismissed the petition, reasoning that “the familial and social commitments of women are such that they cannot be entrusted with certain jobs as their male counterparts can”.

Leela is likely not the only Indian woman to be denied a promotion or even employment on account of laws that treat men and women differently. There are over 200 employment-related laws from across the country that discriminate against female job-seekers, according to the recent State of Discrimination Report by Trayas, an independent regulatory research and policy advisory organisation.

These discriminatory laws allow the State to act as a paternalistic agent and put a premium on the employment of women, impacting female labour participation.

The laws discussed in the study—a few of which group women with children, criminals, and people with disabilities—either completely prohibit the employment of women in certain occupations or impose time restrictions on their work. They also insist on a whole nexus of permissions/conditions that make it hard for employers to take on female employees.

The study, published in March 2022, assessed 23 Indian states on the basis of four restrictions on female jobseekers: (1) working at night; (2) working in jobs deemed hazardous; (3) working in jobs deemed arduous; and (4) working in jobs deemed morally inappropriate.

Of these, employment of women at night is the most legislated: five of the six laws analysed in the study —Factories Act and Rules, Shops and Establishment Act, Contract Labour Act and Rules, Inter-state Migrant Workmen Act and Rules, and Plantation Labour Act—place restrictions on women working at night.

The study ranked Odisha, Meghalaya, Chhattisgarh, and West Bengal as the worst performers in terms of the numbers and egregiousness of their restrictions on female employment. Kerala, Tamil Nadu and Goa were ranked best.

As for the laws, the Factories Act, 1948 has the maximum types of restrictions on female employment – it prohibits women from working at night, in hazardous processes, and in jobs deemed arduous.

The study's conclusions may help explain why Indian women remain severely underrepresented in the formal economy—only 18.6% of all women, and only 24.5% of those in the working-age group, are a part of the workforce in India.

The female working age population possesses an untapped potential: research shows that if India were to focus on harnessing female economic participation, 264 million more workers could be mobilised and the country's GDP could grow by 27%. Removing discriminatory provisions and providing equal opportunities to Indian women, can add USD 700 billion (Rs 70,000 crore) to the country's economy.

### **Legal restrictions and labour participation**

States that had rankings above the median on the State of Discrimination Index—that is, states with relatively fewer restrictions—had greater average female labour force participation rates, number of women in managerial positions, and ratio of women's salaries to men's salaries. Also, these states had an average unemployment rate of 10.39% compared to the 12.36% in states rated below the median. In addition, women's salaries in states with ratings above the median, was 77.4% of men's salaries, in comparison to states with below-median ratings—where it was 67.7% of men's salaries.

Several factors influence women's decision to not join the workforce, studies have shown: income and employment of family; marital status, childcare arrangements and safety; women's decisions to continue studying over joining the labour force early; and domestic responsibilities for instance. The effect of restrictive laws on women's employment remains an unexplored factor though it limits the demand for women workers and impacts their right to choose work.

The report's aim is to advocate competitive federalism, for states to correct discriminatory provisions. We look at a few gender skews in some of the employment-related laws, or their interpretation, by states.

## **Infantilising women**

When laws deem women as a "special" category with no agency, it signals to employers that women are incapable of some jobs. The language of these provisions also reinforces traditional norms—that women are *en masse* a "vulnerable" group and need sanctuary and protection.

These laws end up becoming the tools that restrict their entry into and mobility in the labour market. While drafting or justifying these legal provisions, states have kept women's constraints in mind, but rarely their aspirations.

Some of the laws studied for the report infantilise women, putting them on par with children and giving the State the role of a benevolent intervenor and curtailing the autonomy of female workers. These restrictions have been justified as necessary for preserving "women's safety, moral integrity and health, and for family welfare".

Take, for instance, Section 87 of the Factories Act, 1948 which prohibits the employment of women, adolescents, and children in operations that are classified as "dangerous". It empowers state governments to specify any number of processes as "dangerous", exposing employees to serious bodily injury, poisoning, or disease.

For instance, Bihar prohibits the employment of women in pottery units, West Bengal from working on jute hemp and fibre-softening machines. Madhya Pradesh does not allow women to work on machines used for cutting stones or making grooves on stones in the manufacture of slate pencils.

Even in occupations that are women-centric, laws place restrictions on female employment. For instance, women constitute more than 50% of the workforce in plantations, research has shown, but the Plantation Labour rules of Tamil

Nadu and Tripura prohibit the employment of women in the sector because it is deemed to be “hazardous”. Rule 69A of the Tripura Plantation Labour Rules, 2017 prescribes the “eligibility for employment in spraying works” that prohibits both children and women from engaging in the process.

Bihar and Jharkhand each have deemed 49 processes as “too hazardous” for adult women and children to work in. On similar grounds, more than 650 provisions in Factories Rules across Indian states restrict women’s entry into the labour market.

### **‘Criminal, diseased or woman’**

There are laws that undermine the capabilities of women by grouping them with people with disabilities, people afflicted with diseases, and criminals. The Chhattisgarh Excise Act, 1915, for example, requires a person applying for a liquor licence to submit an affidavit swearing that he would not employ a salesperson or representative who has i) a “criminal background”; ii) “suffers from any infectious or contagious disease or is below 21 years of age”; or iii) is “a woman”.

Laws also diminish the agency of women by anchoring their employment to familial relationships. The Shops and Establishments Acts of Madhya Pradesh and Sikkim, for instance, allow women to work in shops/establishments at night only if they are the owner’s family members.

### **Contesting restrictive laws**

It is not that the laws that limit a woman’s participation in the job market have gone unchallenged. We referred to the *Leela vs State of Kerala* case earlier. Here are some more examples and in a few cases the judgement supported the petitioners:

In *Hotel Association of India and Ors. v. Union of India and Ors., 2006*, the petitioners challenged the prohibition on women serving liquor under Section 30 of the Punjab Excise Act, 1914. The Delhi High Court allowed the petition and declared Section 30 as violative of the Articles of the Constitution.

Such discriminatory legal provisions are justified by arguing that the Constitution allows positive discrimination in favour of women: [Article 15\(3\)](#) permits the State to make special provisions for women and children. Acknowledging that Indian women have been socially and economically disadvantaged for centuries, this Article was [added](#) to the Constitution.

But to reduce women's employment prospects by quoting Article 15 (3) would be "to cut at the very root of the underlying inspiration behind this Article", it was argued in the [Vasantha R. v Union Of India \(Uoi\) And Ors., 2000](#). The petitioners in the case pleaded against Section 66(1)(b) of the Factories Act, 1948, on the grounds that it violated women's fundamental right to livelihood and equality. The Madras High Court allowed the petition, stating that Section 66(1)(b) of the Factories Act creates a classification solely on the basis of sex. The court declared the section as unconstitutional.

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