

The curious case of Indian working women

How a maze of laws across states come between women and work

Using 48 Acts, 169 rules, and 20 notifications/orders, Trayas, a regulatory research and policy advisory company, built an index comparing 23 states on the economic freedom of women

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A woman carries her baby straddled to her back while making bricks at a kiln in South Dinajpur district of West Bengal on Monday, on the eve of the International Women's Day on 8 March. (Photo: PIB)

Only 18.6% of working-age women in India participate in the labour force, three times lower than men, says the Periodic Labour Force Survey (PLFS) 2020. According to the World Bank, Indian women's participation in the formal economy is among the lowest in the world—only parts of the Arab world fare worse. Even as the economy has grown, educational attainment has increased, and fertility rates have fallen, and women are not participating in the formal

The Economic Survey 2018 shows that Indian women typically earn low wages working in highly insecure jobs. India had the largest gender gap in median earnings of full-time employees in 2015. About 88% of women employed in industries and 71% in services are informal (International Labour Organization 2018). Researchers have also consistently found that women also do not rise up the ranks, despite being better supervisors and workers.

Mint Poll

Which sector do you believe will outperform in Q2 earnings?

- Technology
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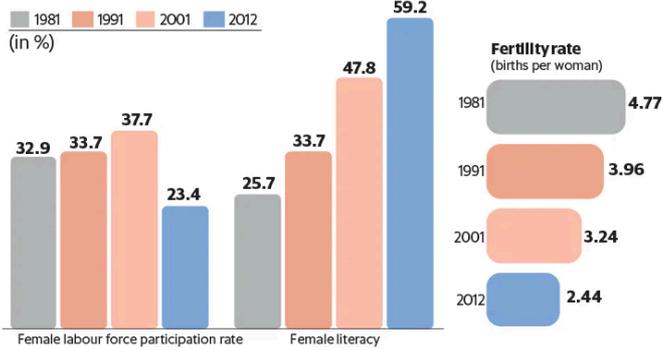
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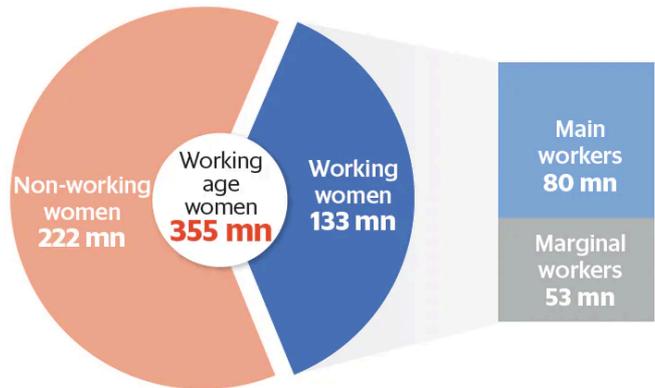
State of discrimination, in nine charts

Legal barriers to women's rights to choose to work in India

Trends in women's labour force participation, literacy and fertility rate

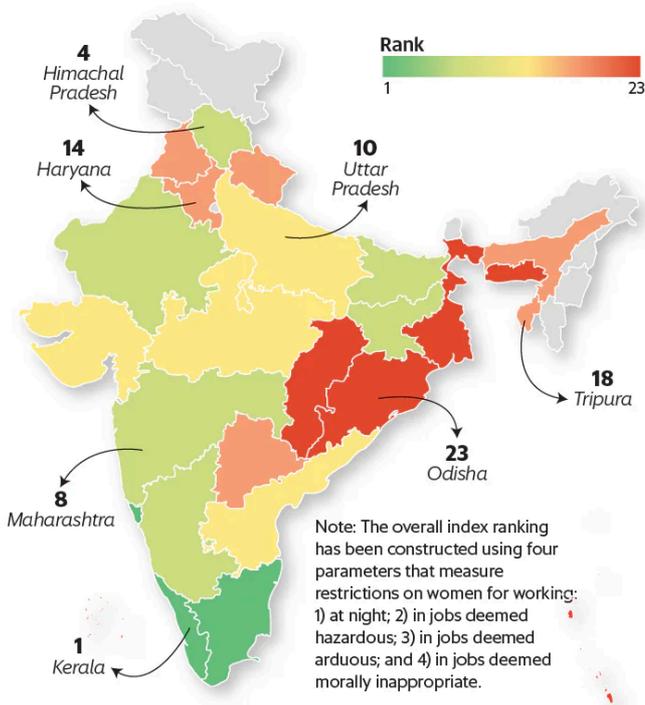


Break-up of women of working age population in India



How states fare overall on legal restrictions for female jobseekers

Higher the rank, lower the extent of restrictions



States' ratings on freedom to work...

Greater the rating, greater the freedom

	At night	In jobs deemed hazardous	In jobs deemed arduous	In jobs deemed morally inappropriate
Kerala	3.2	1.5	1	3
Tamil Nadu	3.2	1.3	1	3
Goa	3	1.5	1	3
Himachal Pradesh	2.8	1.5	1	3
Karnataka	3.2	1.7	1	2
Bihar	2.2	1.5	2	
Rajasthan	2.6	1.5	1	2.5
Jharkhand	2	1.5	2	2
Maharashtra	3	1.5	1	2
Uttar Pradesh	3.2	1.5	1	1.5
Gujarat	2.8	1.5	1	
Andhra Pradesh	2	2	1	2
Madhya Pradesh	2.4	1	1	2
Haryana	2.8	1.5	1	1
Punjab	2.8	1.5	1	1
Telangana	1.2	2	1	
Assam	2	1.7	1	
Tripura	1.8	1.3	1	
Uttarakhand	2.6	1.5	1	1
West Bengal	2.2	1.5	1	1
Chhattisgarh	2.2	1.5	1	1
Meghalaya	1.4	1.7	1	1.5
Odisha	1.2	1.5	1	1

Top and bottom performers on various parameters

Freedom to work at night

- | | |
|------------------|-------------------|
| Most free | Least free |
| ● Kerala | ● Meghalaya |
| ● Tamil Nadu | ● Telangana |
| ● Karnataka | ● Odisha |
| ● Uttar Pradesh | |

Freedom in jobs deemed hazardous

- | | |
|------------------|-------------------|
| Most free | Least free |
| ● Andhra Pradesh | ● Tamil Nadu |
| ● Telangana | ● Tripura |
| ● Assam | ● Madhya Pradesh |
| ● Meghalaya | |
| ● Karnataka | |

Freedom in jobs deemed arduous

- | | |
|------------------|--------------------|
| Most free | Least free |
| ● Bihar | ● All other states |
| ● Jharkhand | |

Freedom in jobs deemed morally inappropriate

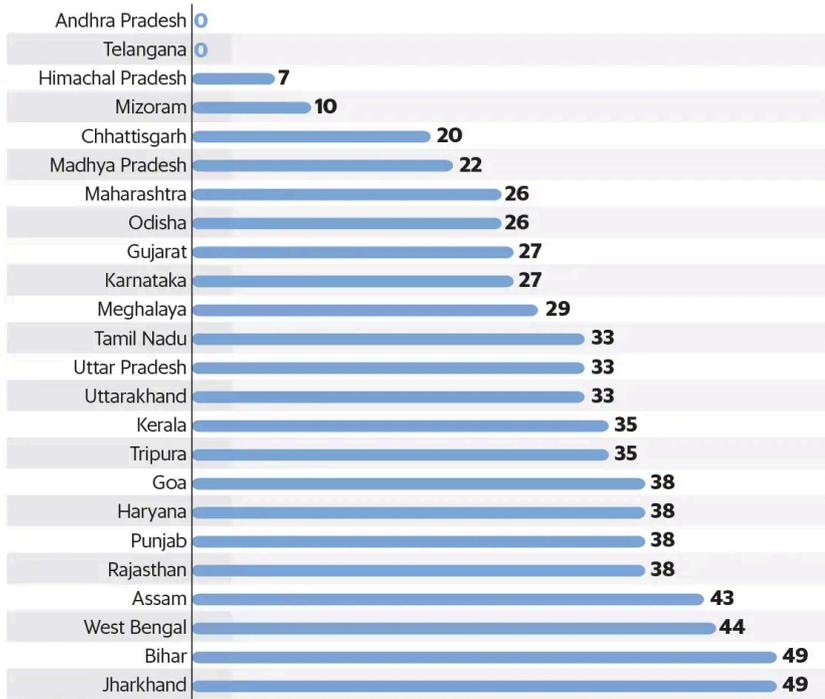
- | | |
|--------------------|-------------------|
| Most free | Least free |
| ● Kerala | ● Uttarakhand |
| ● Goa | ● Punjab |
| ● Himachal Pradesh | ● West Bengal |
| ● Tamil Nadu | ● Chhattisgarh |
| | ● Odisha |

The state of discrimination

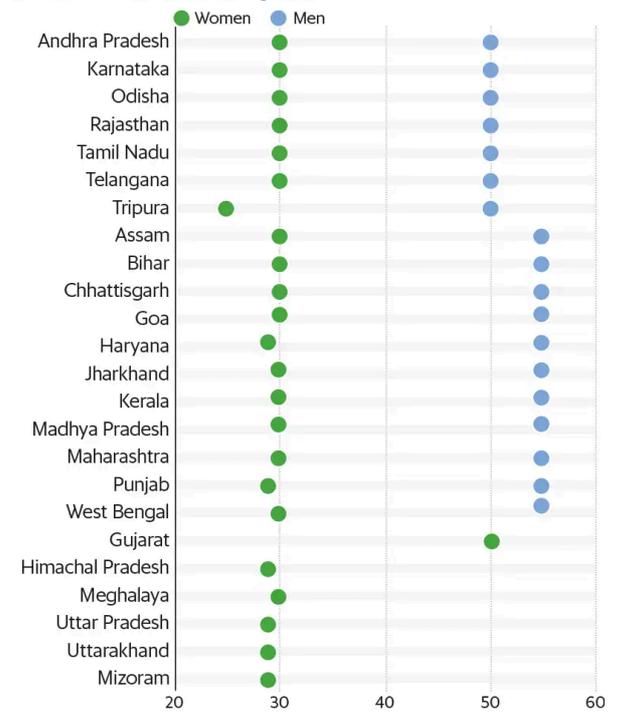
What explains the gender gap in our labour force?

Studies show that family income, marriage, childcare and decisions on children's future, public safety, and political disempowerment affect women's economic participation. But of all the factors, legally sanctioned sex discrimination remains

Number of prohibited factory processes for women



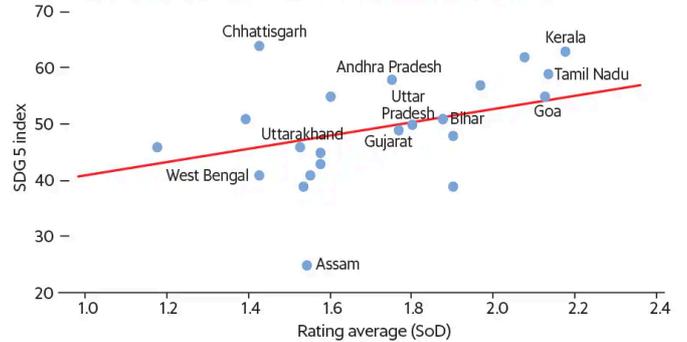
Maximum weight (in Kg) women are allowed to lift in factories compared to men



Reasons cited by states in courts for imposing restrictions on women of working age groups



Correlation between SoD index and SDG 5 index



SDG: Sustainable development goal; SoD: State of discrimination

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Source: Census 2011, NITI Aayog SDG India Index & Dashboard, World Bank, State of Discrimination.

The state of discrimination

Using 48 Acts, 169 Rules, and 20 Notifications/Orders, Trayas, a regulatory research and policy advisory company, constructed an index comparing 23 states on how much economic freedom they give women. The index shows the extent of law-based discrimination in an effort to ultimately repeal these stifling directives. If Indian women participated in the labour market at the same rate as men, over 200 million additional workers could be mobilized. McKinsey Global Institute estimates that by 2025, equal opportunities for women in India could add \$700 billion to the economy.

The 'State of Discrimination Index' tracks how states treat female jobseekers on four freedoms: to work at night; to work in jobs deemed hazardous; to work in jobs deemed arduous, and to work in jobs deemed morally inappropriate.

What is the status of legally sanctioned discrimination against women? Kerala, Tamil Nadu, and Goa provide the greatest freedom for women to choose work, while Odisha, Meghalaya, Chhattisgarh, and West Bengal impose the most restrictions. States give the least freedom on the employment of women in jobs deemed arduous and on the employment of women at night in factories. Working in the night shift is the most legislated subject, and state rules related to The Factories Act, 1948, contain the most restrictions.

Work at night

Prior to the industrial revolution, most work had to be halted at sunset. By 1896, most mills adopted electric light and machinery that could run around the clock. While the working day of men increased from 12 to 16 hours, that of women remained capped at 11. In 1921, India cemented these restrictions by adopting International Labour Organization Conventions prohibiting the employment of women in factories between 7pm and 5 am.

Several state and union laws mandate prohibitions against women working at night in factories, commercial establishments, plantations, and as contract and migrant workers. In intent, these restrictions have been set to protect women, to guard them against exploitation, and to preserve 'the vigour of the race'.

Women workers at a vegetable market in Delhi.

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Karnataka, Kerala, Tamil Nadu, and Uttar Pradesh grant the most freedom to women to work at night across establishment types, while Odisha and Telangana place the greatest restriction.

Not a single state allows women this freedom in factories; eight grant industry exemptions under special conditions. For example, some states exempt the fish

food perishability is unclear. In a different example, in 2020, Himachal Pradesh revoked the exemption for three months, leaving factory owners and female employees in the lurch. Viruses don't stop propagating at night or distinguish between the sexes, so why Himachal would take this step is unclear.

Several petitioners have approached the courts against this particular provision of the Factories Act. Vasantha R, a textile mill worker in Tamil Nadu, went to the Madras High Court to fight the state's policy of preventing her from working in the night shift despite her willingness and her employer's accommodations. Luckily for her, the court agreed with her reasoning. But in the case of Leela, who was denied a promotion at the Kerala Books and Publication Society because of the same provision, the Kerala High Court decided that the provision was beneficial protection.

Each state in India has its own Shops and Establishments Act to regulate trade and businesses not engaged in manufacturing. Only in two states, Goa and Tamil Nadu, are there no prohibitions. Seven states allow women this freedom if their employers comply with conditions, while three do so on a case-by-case basis. How states arrive at these regulatory choices remains unexplained. There are exemptions for women employed to take care of the sick, infirm, and destitute in at least four states, for IT establishments in Telangana, and for cinemas and theatres in Jharkhand.

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Between 2015 and 2021, the government of Haryana granted 592 exemptions to 212 firms for employing women in night shifts. For instance, in 2015, Accenture secured exemptions for eight different locations including two separate floors in the same building. To grant exemptions, the administration would have had to scrutinize each application and check for compliance with the long list of conditions. In conversations with IT establishments, Trayas learnt of a funny phenomenon: women getting picked up after work by 'new cousins'. As it turns out, one of the conditions is that female employees must commute in a company vehicle or with a relative.

The Plantation Labour Act, 1951, prohibits the employment of women in plantations between 7pm and 6am. All states in the index follow this whip, unless the plantation gets approval. The Contract Labour Act, 1970, empowers state governments to prescribe conditions for contract labour to be gainfully

labourers to work at night without restrictions, but seven make this freedom scarce. The Inter-State Migrant Workmen Act, 1979, empowers states to prescribe conditions for women's employment. Only Gujarat and Kerala allow female migrant workers to work at night in all situations. On all three laws, states make exceptions for women working as midwives and nurses or in creches, i.e., typically 'female jobs'.

Holding women hostage to sunset curtails their options to earn overtime pay and rise up the ladder. In fact, researchers at the World Bank show that allowing women to work at night is positively correlated with the likelihood of women being top managers.

Jobs deemed hazardous

Following the Industrial Revolution, many economies banned women from certain jobs to protect them from unsafe working conditions. The Bombay Factory Commission and Factory Labour Commission led to the passing of the first Factories Act in India in 1881. Notions such as women working with moving machinery were at greater risk and more prone to accidents, led to sex-specific restrictions. Even as safer machines were later introduced, the anti-woman bias continued.

States continue to restrict women from working in several jobs in fact [OPEN IN APP](#) commercial establishments, and plantations. Andhra Pradesh and Telangana are the only two states that allow women to work in all processes in all establishments. Madhya Pradesh is the most restrictive; it is the only state that prohibits women from working in dangerous processes in both factories and commercial establishments.

The Factories Act prohibits female employees from cleaning, lubricating, or adjusting machines, working near cotton openers, and working in operations deemed hazardous. States are empowered to extend the prohibition to 'dangerous operations'.

Twenty-two states prohibit the employment of women in up to 80 different processes, including pottery or brassware manufacturing, working on stone-cutting machines or in stone grooving needed for slate pencils, and working on

zinc and lead are treated, where employees can be exposed to benzene, where pesticides are manufactured, and where dye intermediates are manipulated. Think of each of these restrictions as a stream of income women are cut from. Bihar is the worst offender, prohibiting women from 49 processes.

Women labourers at a work site in a Rajasthan village.

On a positive note, only two states, Madhya Pradesh and Sikkim, restrict commercial establishments from employing women in jobs deemed hazardous. But what shops are engaged in hazardous processes? When it comes to plantations, Tamil Nadu and Tripura prohibit the employment of women in handling, storing, transporting, or spraying of insecticides/pesticides.

In India, laws often seem to hold women's biological imperative above their standing as individuals. This approach has deeper repercussions: women remain ensconced in unpaid care work and their work and incomes are devalued. [OPEN IN APP](#) that prohibit women from working on, or even near sophisticated machinery, leave them wanting in skills and training. Samita Sen, a historian and professor of History at the University of Cambridge, shows that historically, such restrictions made employers dispense with female workers by mechanizing their tasks.

Jobs deemed arduous

Women are systematically excluded from jobs citing physical limitations. According to the World Bank, 46 countries apply weight-lifting restrictions on women's labour.

Factories regulations allow states to put caps on the maximum weight women can carry. Women are prohibited from lifting heavy objects in 22 states. Bihar

amount of weights men can lift, but not so for women. States like Uttar Pradesh and Uttarakhand make a distinction between intermittent and continuous work to decide weight limits. What constitutes intermittent and continuous work has not been defined.

Weight restrictions may have been put into effect to preserve women's health and safety in the workplace. But they also make it so that all women, irrespective of individual ability or willingness, are fettered.

Morally inappropriate

The framers of the Indian Constitution recognised prohibition on intoxicating drinks as an ideal. The policy aversion towards consuming liquor, the centrality of 'public order' and 'decency' to administration, and the 'special protection' approach, have combined to restrict employment opportunities for women.

The Excise Acts of most states exclude women from the sale of liquor to save 'the woman folk from becoming addicts to the intoxicants and avert and avoid any conflict between sexes and chances of foreseen sexual offences'.

Goa, Himachal Pradesh, Kerala, and Tamil Nadu allow the most freedom to women to be employed in licensed liquor establishments, while Chhattisgarh, Haryana, Odisha, Punjab, Uttarakhand, and West Bengal are the most

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Eight states prohibit the employment of women in foreign liquor establishments and nine require written permission from the excise commissioner/Board. Twelve states prohibit women from working as salespersons, or in premises where the public consumes country liquor and three require written permission.

Chhattisgarh and Uttar Pradesh require a licence applicant to file an affidavit that, 'he shall not employ any salesman or representative who has criminal background', or a person with an 'infectious or contagious disease', or 'a woman'. In Mumbai, restaurant employees are required to procure a 'Nokarnama' under the Foreign Liquor Rules, 1953. In 2014, Rukmini Palace, a bar-cum-restaurant in the city, had all these Nokarnamas. Yet, the police showed up every day at the premises, harassing employees. The owner took the government to court. Just like in Mumbai, the Government of West Bengal conjured up an additional

Ostensibly, these restrictions have been instituted to preserve public health, public order, and morality. But women employed in the sector and establishments protest that they do more harm than good. Even the Supreme Court has held these stereotypes as outdated, regressive, and detrimental.

Way ahead

Across states, laws hold women hostage to anachronistic mores. The laws even go so far as to use absurd equivalence between adult women, and children, diseased, disabled, and criminals. At times, state governments exceed their legal mandates and assign themselves enormous discretion. Funnily enough, they selectively apply these provisions only to private establishments.

While justifying these fetters, states have kept women's constraints in mind, but rarely their aspirations. Legally sanctioned restrictions on women put them at a competitive disadvantage, take away their bargaining power, preclude them from formal jobs, and of course, open them up to venal harassment.

On the positive side, some states have started revising discriminatory laws based on facts and logic. In 16 cases analysed in the Trayas report, courts invalidated state-sanctioned discrimination. At least four states have been granting female employment-related permissions to factories following judgements. Others have amended their principal legislation or granted exemption to specific sectors. OPEN IN APP

India is committed to meeting Sustainable Development Goal 5.1.1 of promoting non-discrimination on the basis of sex. Many discriminatory restrictions on female jobseekers stem from labour laws, and there is an imminent opportunity to correct these through the new labour codes. The codes remove union level restrictions and empower states to increase or decrease these.

Whether states choose to recognise women as powerful economic agents or as liabilities remains to be seen.

[Read the full report here.](#)

(With additional inputs from: Sarjun Kaur, Sirian Kaur, Prisha Saxena, and

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