



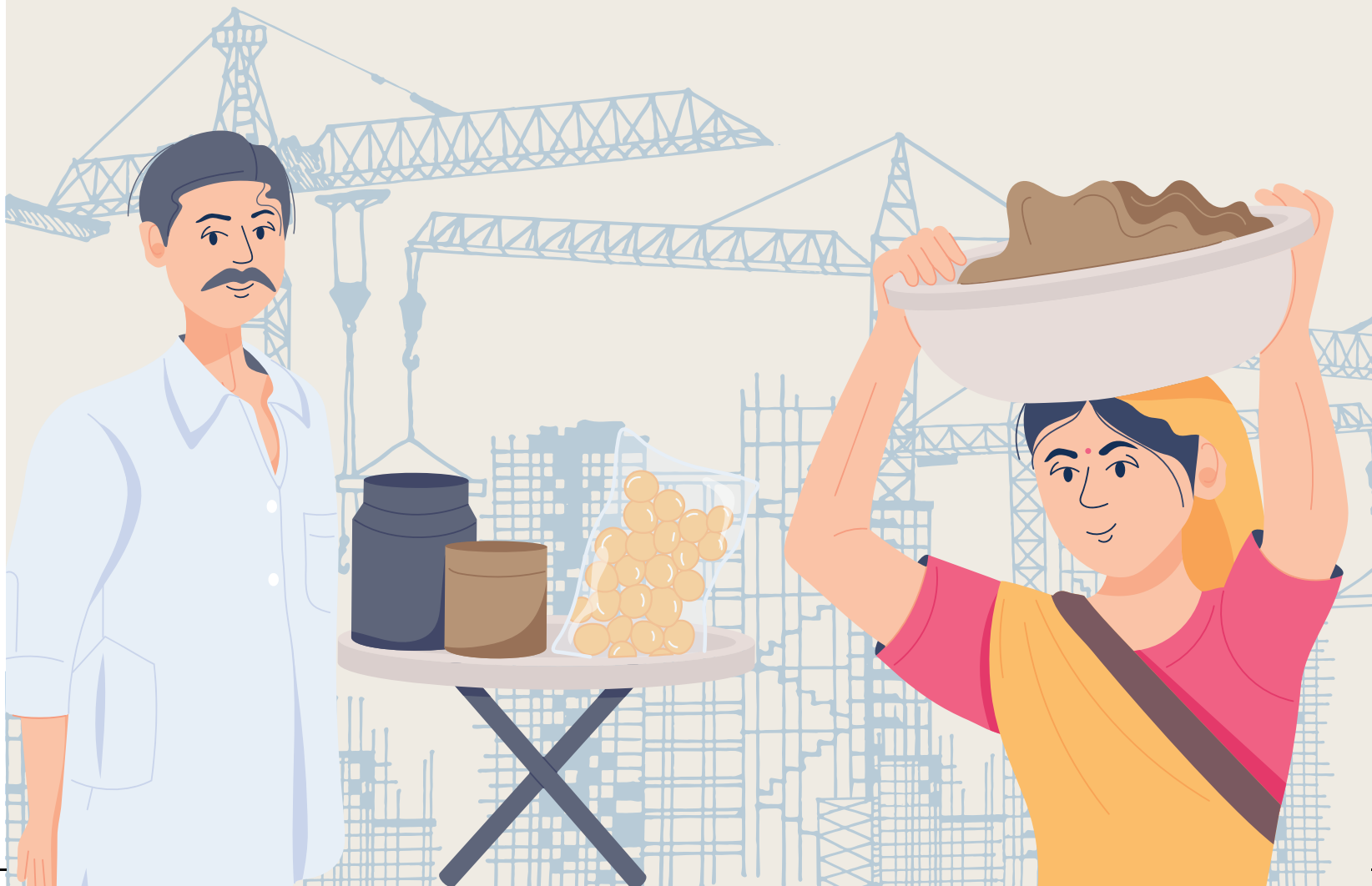
GNLU LEGAL SERVICES COMMITTEE

ABHILEKH

Harmony in Labour :

Forging Inclusive Justice for Flourishing Societies.

FEBRUARY - MARCH 2024



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Women Workers and Labour Codes in India

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THE CONTEXT

The concept of equality in terms of employment and equal protection before law has been enshrined in the constitutional provisions of the country and through several legislative initiatives that are committed to promoting gender justice and women empowerment. The First National Commission on Labour (NCL) 1969, drawing inspiration from the ILO conventions, had recognized the need for protective legislation to promote women's employment and end discrimination in work. The 2nd NCL also recognized the need to provide special attention to women workers along with overall labour protection. In pursuance to the recommendations of the Commission, labour reforms were initiated in the country which was experiencing declining participation of women in the workforce.



The labour regulations for ensuring employment protection, better working conditions, access to social security, equal pay, work-family balance, skill enhancement, upward mobility, addressing discrimination and harassment, etc., are important preconditions for the sustenance of women in employment for a longer period. The new labour rules passed in 2019-20 have special provisions to protect women workers' rights, intending to simplify procedures, improve compliance, facilitate corporate operations, and promote worker welfare. This reform combined 29 major acts into four labour codes: The Wage Code 2019, the Social Security Code 2020, the Industrial Relations Code 2020, and the Occupational Safety, Health, and Working Conditions Code 2020. This restructure marks a fundamental change of India's regulatory framework, improving employment protection and protecting workers' rights. Some of the provisions ensuring social security and protection of the well-being of women workers are discussed below.

PROVISIONS FOR WOMEN WORKERS IN LABOUR CODES

The 2019 Code on Wages incorporates many labour regulations, notably the Equal Remuneration Act (ERA) of 1976, which requires equal compensation for men and women performing similar work without discrimination in recruiting. India, a signatory to ILO Conventions C 100 and C 111, has been implementing equity principles through the ERA since 1976. Furthermore, the Code requires the establishment of Central and State Advisory Boards, with at least one-third of the members being women. These boards are entrusted with suggesting strategies to increase women's labour force participation in India, which has been persistently low and declining over the last two decades (Sarkar and Samantroy, 2023). The Code on Social Security 2020 incorporates the Maternity Benefit Act of 1961, which was revised in 2017 to increase maternity leave from 12 to 26 weeks. This amendment goes beyond the 14-week maternity leave recommended by the International Labour Organization's Maternity Protection Convention 183, 2000, and Recommendation No.191, which advises a minimum of 18 weeks for optimal protection. The new amendment under Section 11 A of the Social Security Code has included several gender-sensitive provisions like mandatory crèche facilities for establishments with 50 or more employees, provisions for work from home (flexible working) and leave provisions extended to the surrogate as well as adoptive mothers. Even the Industrial Relations Code 2020, which subsumes three existing laws, establishes Fixed Term Employment (FTE), wherein regular employment contracts are promoted for all workers and the benefits are at par with the permanent employees including the provision of gratuity with continuous service of one year. This provision

dresses informal employment of women workers boosting their access to social security. Also, the inclusion of a Reskilling fund for workers who are affected by retrenchment to upskill, which benefits womenworkers who lack the necessary skills. The Occupational Safety Health and Working Conditions (OSH) Code 2020, that consolidates 13 laws has introduced special provisions for women workers and also extends to both contract workers and migrant workers. In chapter 10 titled 'Special Provisions relating to Employment of Women' under the OSH Code 2020, a provision for night work has been introduced that was earlier restricted under the Factories Act 1948.-It states that consenting women shall be entitled to work 6:00 A.M. and beyond 7:00 P.M. subject to conditions related to safety, holidays and working hours. Further, the OSH code's Draft Central Rules suggest various provisions for women's workplace safety and comfort, such as transportation arrangements (pick-up and drop-off at her apartment), well-lit routes, and proximity to toilets and drinking facilities. It also emphasizes creating safe and healthy working conditions and assuring The Occupational Safety Health and Working Conditions (OSH) Code 2020, that consolidates 13 laws has introduced special provisions for women workers and also extends to both contract workers and migrant workers. In chapter 10 titled 'Special Provisions relating to Employment of Women' under the OSH Code 2020, a provision for night work has been introduced that was earlier restricted under the Factories Act 1948.-It states that consenting women shall be entitled to work 6:00 A.M. and beyond 7:00 P.M. subject to conditions related to safety, holidays and working hours. Further, the OSH code's Draft Central Rules suggest various provisions for women's workplace safety and comfort, such as transportation arrangements (pick-up and drop-off at her apartment), well-lit routes, and proximity to toilets and drinking facilities. It also emphasizes creating safe and healthy working conditions and assuring compliance

with the Sexual Harassment of Women at Workplace Act of 2013. The OSH Code has also introduced a provision of crèche facilities for Micro Small and Medium Enterprises (MSME) in Section 24 (3) wherein it states that cluster of small-scale industries can pool their resources and can set up a common crèche. The OSH code expands the concept of 'migrant worker' to include individuals who migrate independently. Women migrants can benefit from the code's welfare measures, and registration is made easier with self-declaration and Aadhar. A toll-free helpline is available for women migrants in distress. In addition, penalties are used to construct a social security fund, to provide universal access to social security for unorganised workers, notably women in this sector as outlined under Section 115(3).



CONCLUDING REMARKS

Keeping in view the low participation of women in the labour market, the new labour codes were much awaited reforms that can boost employment and industrial growth. The codes became a reality after several tripartite consultations of the Ministry of Labour and Employment with the Trade Unions, Employers' Associations and representatives from the State Government who had provided their opinions and were also examined by the Parliamentary Standing Committee that provided recommendations to the government.



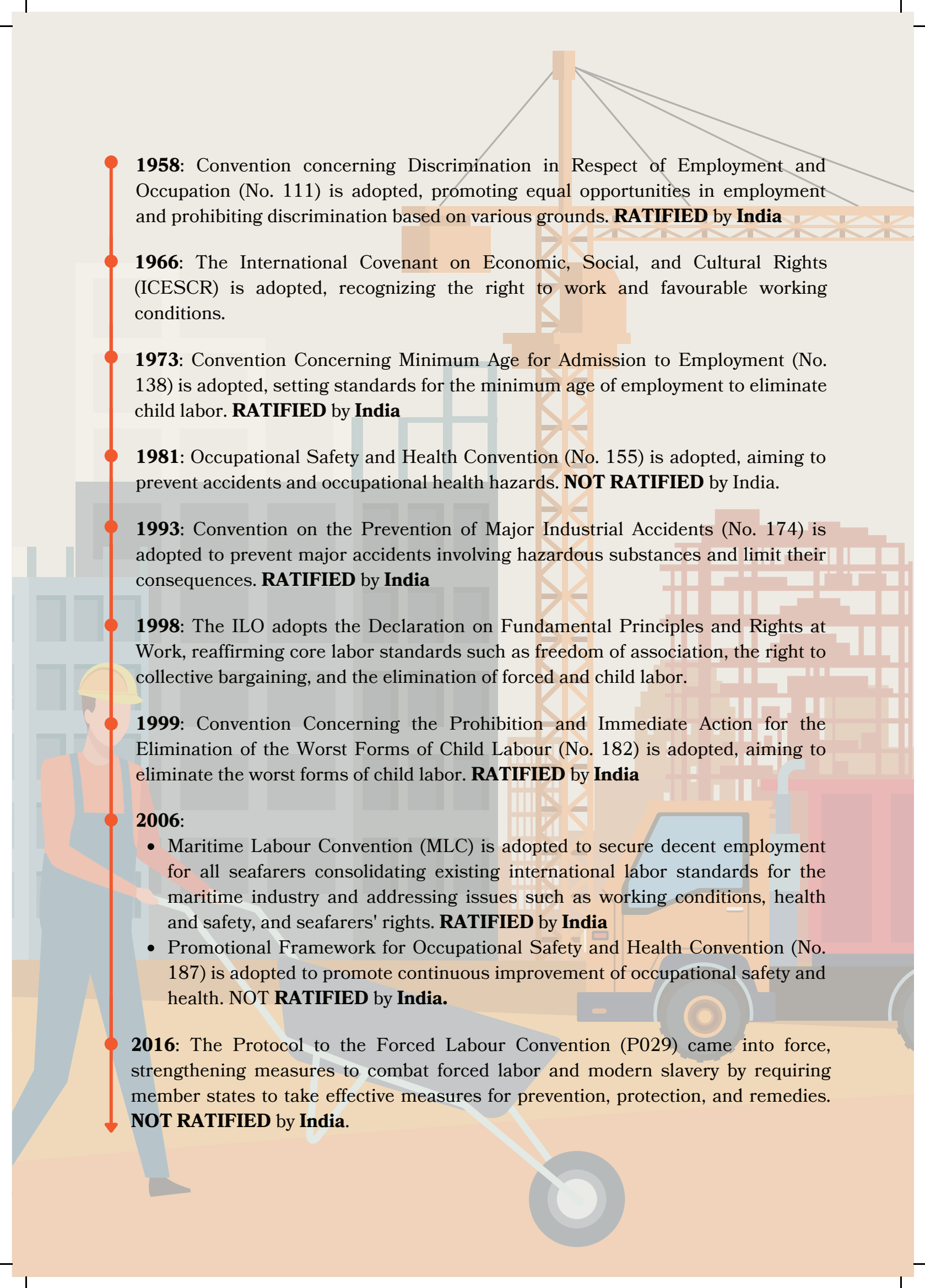
Several provisions in favour of women were drafted like the provisions for creches for MSMEs as per the recommendations of the Parliamentary Standing Committee.

With regard to the implementation of the Labour codes, the States are in the process of formulating rules in adherence to the Draft Central Rules notified by the Ministry of Labour and Employment. Since many States have already been in the process of formulating the State Rules, it is important to engage in inter-state coordination for better implementation of provisions for women workers enshrined in the codes. State Labour Welfare Boards, Sector Schemes etc. need to have convergence towards better implementation of the labour codes.



Evolving Labour Rights : A Timeline of International Conventions

- **1864:** The International Workingmen's Association (First International) is founded, initiating early international efforts towards labor rights and worker protections.
- **1919:** The International Labour Organization (ILO) is established as part of the Treaty of Versailles after World War I, becoming the primary international organization for labor issues.
- **1926:** The Slavery Convention is adopted by the League of Nations, marking an early international effort against slavery and setting a precedent for human rights agreements.
- **1930:** Convention Concerning Forced or Compulsory Labour (No. 29) is adopted, aiming to suppress the use of forced labor. **RATIFIED** by **India**
- **1944:** The Declaration of Philadelphia is adopted, emphasizing labor rights' importance for peace and security in the post-World War II era.
- **1948:** Freedom of Association and Protection of the Right to Organise Convention (No. 87) protects the right of workers and employers to establish and join organizations of their choosing without previous authorization. **NOT RATIFIED** by **India**.
- **1949:** Right to Organise and Collective Bargaining Convention (No. 98) is adopted, aiming to protect the right to organize and promote voluntary collective bargaining. **NOT RATIFIED** by **India**.
- **1951:** Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value (No. 100) is adopted, addressing gender discrimination in remuneration. **RATIFIED** by **India**.
- **1957:**
 - The European Economic Community (EEC) Treaty is signed, laying the foundation for the European Union (EU).
 - Convention concerning the Abolition of Forced Labour (No. 105) is adopted, canceling certain forms of forced labor and exceptions provided under the Forced Labour Convention of 1930. **RATIFIED** by **India**



• **1958:** Convention concerning Discrimination in Respect of Employment and Occupation (No. 111) is adopted, promoting equal opportunities in employment and prohibiting discrimination based on various grounds. **RATIFIED** by **India**

• **1966:** The International Covenant on Economic, Social, and Cultural Rights (ICESCR) is adopted, recognizing the right to work and favourable working conditions.

• **1973:** Convention Concerning Minimum Age for Admission to Employment (No. 138) is adopted, setting standards for the minimum age of employment to eliminate child labor. **RATIFIED** by **India**

• **1981:** Occupational Safety and Health Convention (No. 155) is adopted, aiming to prevent accidents and occupational health hazards. **NOT RATIFIED** by India.

• **1993:** Convention on the Prevention of Major Industrial Accidents (No. 174) is adopted to prevent major accidents involving hazardous substances and limit their consequences. **RATIFIED** by **India**

• **1998:** The ILO adopts the Declaration on Fundamental Principles and Rights at Work, reaffirming core labor standards such as freedom of association, the right to collective bargaining, and the elimination of forced and child labor.

• **1999:** Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (No. 182) is adopted, aiming to eliminate the worst forms of child labor. **RATIFIED** by **India**

• **2006:**

- Maritime Labour Convention (MLC) is adopted to secure decent employment for all seafarers consolidating existing international labor standards for the maritime industry and addressing issues such as working conditions, health and safety, and seafarers' rights. **RATIFIED** by **India**
- Promotional Framework for Occupational Safety and Health Convention (No. 187) is adopted to promote continuous improvement of occupational safety and health. **NOT RATIFIED** by **India**.

• **2016:** The Protocol to the Forced Labour Convention (P029) came into force, strengthening measures to combat forced labor and modern slavery by requiring member states to take effective measures for prevention, protection, and remedies. **NOT RATIFIED** by **India**.



Navigating Labour Laws : Key Insights into an Inclusive Work Environment

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The business landscape in India is rapidly changing and becoming complex each day. In these changed scenarios, it becomes very important that employers' and employees' relations are regulated. It is also significant to note that workplace diversity and inclusion, by promoting equity and belongingness, maximize organizational effectiveness. Modern organizations are actively reshaping their workforce demographics, consciously embracing diversity. Diversity in the workforce is not only a moral imperative but also a strategic advantage; it fosters innovation and adaptability.

There has been a remarkable shift in the mindset of organizations, where diversity is no longer viewed as an isolated initiative but rather as a pervasive value. All employees, from managerial or administrative levels to subordinate positions, now acknowledge the importance of diversity in the workplace. This shift has led to open conversations about the tangible benefits of diversity, fostering an environment where

are accepted and celebrated. Inclusivity, therefore, acts as a driving force for the success of any organization.

To foster an inclusive work environment, diversity must extend to top-level leadership positions. Key roles within organizations must reflect diversity as well. The absence of diversity at the highest levels can impede innovation and adaptability. Cultural barriers must be removed, and awareness must be heightened to address this issue. Many organizations continue to struggle with these cultural barriers, resulting in feelings of exclusion among certain individuals. Removing these barriers is essential to creating an inclusive work environment where everyone feels valued and can contribute effectively to the organization's progress.

To promote diversity and cultivate an inclusive workplace, it must be viewed

as a continuous process. It cannot be achieved unless there is a strong stable commitment from all the stakeholders. Rigorous planning, strategic initiatives, and continual progress evaluation are essential for success.

There are various challenges that any organization may find in tackling unconscious biases. Overcoming these challenges requires strengthening and empowering leadership. Leaders must undergo training to emphasize inclusivity and have their roles clearly defined. Organization policies, schemes, and programs should seamlessly integrate diversity and inclusion principles. Senior leaders must be held accountable for fostering diversity and inclusion. Implementing a structured reward system can further incentivize individuals who champion diverse and inclusive teams.

The employees come from a variety of backgrounds. The regional and cultural diversities are to be acknowledged and respected. There are various ways of accepting differences and promoting diversity and inclusivity in the workplace. Initially, the HR policies are to be set up in such a manner that it requires all the employees to accept all other employees and avoid any act of discrimination. There must be a zero-tolerance policy for any act of discrimination. The employees should also be encouraged to speak up when they don't feel included or welcome by others.

In India, there is no specific legislation solely dedicated to combating discrimination in the workplace. However, certain laws, such as the Rights of Persons with Disabilities Act, 2016, the Equal Remuneration Act, 1976 (along with its successor, the Code on Wages, 2019), the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017, and the Transgender Persons (Protection of Rights) Act, 2019, contain provisions aimed at preventing discrimination.

These laws represent robust legal frameworks, and advocating for their awareness and

effective implementation is crucial. Beyond the statutory obligations being laid down under these laws, the employers themselves can also take provocative steps and strive to create a workplace that is both diverse and inclusive. Employers should ensure that work opportunities are provided to individuals from different backgrounds including those pertaining to religion, gender, sexual orientation, or socio-economic status. The inclusive approach needs to be embraced which can value the differences while actively dismantling systematic barriers to full participation.



Some of the strategies that employers may consider are-

- Identifying core organizational values;
- Audit and assessment of the best practices from a diversity and inclusivity perspective;
- To develop internal policies and support systems and to ensure legal compliance;
- Conduct creative sensitization workshops.

Inclusivity is the reflection of any organization and society at large. If taken seriously and with a positive approach it will lead to progress at individual and organizational levels.



A peek into the 5th GNLU Annual Legal Services Forum

The GNLU Annual Legal Services Forum (GALSF) is the flagship event of the GNLU Legal Services Committee, aiming to unite Legal Aid and Services Committees nationwide. It addresses important socio-legal issues, fosters collaboration, and provides a platform for voices from law universities, NGOs, and Legal Services Authorities across India.

Our goal is to make affordable legal services accessible to the underprivileged and bridge the gap by sharing unique experiences. The theme for the 5th annual legal services forum and the mediation competition is “Inclusive Justice: Building Sustainable Societies” In the Indian context, the 5th annual legal services forum is strategically designed to align with SDG No. 1, "No poverty," and SDG No. 8, "Decent Work and Economic Growth”.

Under SDG No. 1, the Forum takes a comprehensive approach by focusing on the rights and socio-economic conditions of domestic helpers and street vendors. Through empirical research and legal advocacy, the forum aims to assess progress in mitigating poverty among these vulnerable groups, shedding light on income disparities and daily struggles often faced by those operating on the fringes of the formal economy.

This year’s forum is dedicated to addressing pressing issues in society by combining two vital components, a Mediation Competition and the GNLU LSC Annual Grant Presentation. The Mediation Competition is focused on family laws, property issues, labor laws, and consumer matters. On the other hand, the Grant Presentation highlights the rights and conditions of domestic workers and street vendors through an empirical research and implementation program.



Gratitude to Our Supporters: Honoring the Pillars of GALSF 2024

Dear Readers,

We are delighted to extend our heartfelt gratitude to our esteemed sponsors for their invaluable support and contribution to the success of the 5th GNLU Annual Legal Services Forum (GALSF). Their unwavering commitment to promoting legal education and fostering a culture of inclusivity has been instrumental in making this event a resounding success.

International Arbitration and Mediation Centre Hyderabad (IAMCH), our Prime Partner for the Mediation Competition, has been a cornerstone of support in our endeavors to promote access to justice and empower future legal professionals through development of their mediation skills. Their dedication to promoting excellence in legal education and mediation to further the ends of justice has been truly inspiring. We are deeply grateful for their steadfast support and commitment to our shared goals.

Gupta Law Associates' generous monetary funding of the prize money for the Mediation Competition winners has enabled us to recognize and reward the outstanding achievements of participants. Their support has empowered us to create a platform where aspiring legal minds can showcase their skills and engage in meaningful dialogue to resolve disputes amicably. We extend our sincere thanks to Gupta Law Associates for their invaluable contribution to the success of the competition.

Bridge Policy Think Tank, offering their guidance and insights, in addition to books as prize components for the Mediation Competition winners, has provided invaluable expertise and resources to enhance our understanding of policy frameworks and their intersection with legal practice. Their commitment to enriching the intellectual discourse at the forum has been truly commendable. We extend our heartfelt thanks to Bridge Policy Think Tank for their unwavering support and dedication as our Knowledge Partners for the Mediation Competition.

Vidhi Centre for Legal Policy, serving as our Knowledge Partner for the GNLU Legal Services Funding Grant Paper Presentation of the 5th GALSF, has offered internships to winners and guided the Organizing Committee. Their expertise and guidance have been invaluable in shaping the research and policy analysis component of the forum. We extend our sincere gratitude to Vidhi Centre for Legal Policy for their invaluable contribution to the success of the event.



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FEBRUARY - MARCH 2024

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