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## Women workers in the construction sector in India: Legal and policy dimensions with constitutional measures

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### Abstract

Women workers in India's construction sector constitute one of the most marginalized and invisibilized segments of the informal workforce. Despite robust constitutional protections under Articles 14, 15(3), 16, 39, and 42 of the Indian Constitution and sector-specific legislation such as the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, women continue to experience systemic exploitation, unequal wages, unsafe working conditions, and limited access to social protection mechanisms. Drawing on empirical data collected from fifteen construction sites across Bengaluru between 2023 and 2024, this paper provides a critical legal and socio-economic analysis of the lived realities of women construction workers. It evaluates the implementation gaps in key welfare legislations including the BOCW Act and the Code on Social Security, 2020, alongside pertinent judicial pronouncements that seek to enforce accountability and gender equity in the sector. The analysis reveals a stark disjuncture between legal entitlements and their on-ground realization. The paper concludes with gender-sensitive policy recommendations aimed at strengthening statutory enforcement, ensuring portability of welfare benefits, and institutionalizing gender audits within the construction welfare governance framework.

**Keywords:** Bengaluru field study, BOCW Act, 1996, Social Security Code, 2020, women construction workers, Informal labour, gender discrimination, labour law enforcement, social protection, migrant workers, welfare schemes, judicial intervention, cess fund utilization, gender-responsive policy

### 1. Introduction

The construction sector in India holds a critical position in the nation's economic trajectory, emerging as the second-largest source of employment after agriculture. It accounts for approximately 9% of the Gross Domestic Product (GDP) and plays a pivotal role in driving infrastructural growth, urban expansion, and employment generation<sup>[1]</sup>. Within this vast and labour-intensive industry, women form an indispensable yet overlooked segment of the workforce. Current estimates suggest that women comprise around 35% of the total construction labour force<sup>[2]</sup>. However, their roles are overwhelmingly confined to unskilled and physically demanding tasks such as carrying head loads, mixing mortar, transporting water, and sieving sand<sup>[3]</sup>.

Despite their visible presence at construction sites across both rural and urban India, the labour of women workers remains systemically devalued and largely excluded from legal recognition and formal labour protections. The sector is characterized by extreme informality, with most employment being casual, temporary, and mediated through multiple layers of sub-contracting<sup>[4]</sup>. This structural informality disproportionately affects women workers, who often lack written contracts, social security benefits, maternity protection, or access to grievance redressal mechanisms.

Recent policy interventions, such as the Code on Social Security, 2020 and the Occupational Safety, Health and Working Conditions Code, 2020, have attempted to consolidate and

<sup>1</sup> Economic Survey 2023-24, Ministry of Finance, Govt. of India, Vol. I, at 148 (2024).

<sup>2</sup> International Labour Organization [ILO], Women in Construction: Breaking the Barriers (2022). <https://www.ilo.org/wcmsp5/groups/public>.

<sup>3</sup> Neetha N., Women Workers in Construction Industry, V.V. Giri National Labour Institute (2021).

<sup>4</sup> Kamala Sankaran & Ujjwal Kumar Singh, Towards Legal Empowerment of the Working Poor in India 75-76 (Routledge 2019).

rationalize labour regulations <sup>[5]</sup>. However, these reforms have been critiqued for diluting existing protections, failing to specifically address gender-based vulnerabilities, and placing the burden of compliance on workers rather than employers <sup>[6]</sup>. Moreover, empirical studies conducted in metropolitan areas such as Bengaluru and Delhi continue to reveal stark gender disparities in wages, safety provisions, access to identity documents, and welfare registration under the Building and Other Construction Workers' (BOCW) Welfare Boards <sup>[7]</sup>.

The persistence of such exclusion highlights the urgent need to critically evaluate the legal and institutional frameworks governing women workers in the construction sector. Their lived realities underscore a fundamental contradiction between their economic indispensability and their socio-legal invisibility.

## 2. Constitutional and Legal Framework

### 2.1 Constitutional Provisions

The Constitution of India provides a robust normative foundation for the protection, empowerment, and inclusion of women workers, including those engaged in informal and precarious employment like construction. Several constitutional provisions, particularly under Part III (Fundamental Rights) and Part IV (Directive Principles of State Policy), directly or indirectly safeguard the interests of women workers and mandate the State to adopt affirmative measures for their welfare and dignity.

- Article 14 guarantees *equality before the law and equal protection of the laws* to all persons, forming the cornerstone of non-discrimination and substantive equality <sup>[8]</sup>.
- Article 15(3) empowers the State to make *special provisions for women and children*, thereby enabling the enactment of protective labour legislation and welfare measures tailored to address historical and structural disadvantages faced by women <sup>[9]</sup>.
- Article 16 ensures *equality of opportunity in matters of public employment*, a right that assumes particular significance in the context of informal sectors where women are routinely denied equitable access and representation <sup>[10]</sup>.
- Article 39(a) directs the State to secure the *right to an adequate means of livelihood for all citizens*, while Article 39(d) emphasizes *equal pay for equal work for both men and women*, a principle still eluding full realization in India's construction sector, where gender wage gaps persist across skill levels <sup>[11]</sup>.

- Article 42, embedded in the Directive Principles, calls upon the State to ensure *just and humane conditions of work and maternity relief*, forming the basis for legislation such as the Maternity Benefit Act, 1961 and relevant provisions in the BOCW Act and the Social Security Code <sup>[12]</sup>.

The judiciary has progressively interpreted these constitutional guarantees to uphold the rights of women workers. In *Air India v. Nargesh Meerza*, the Supreme Court invalidated discriminatory employment regulations based on sex and marital status, reaffirming that Article 14 and Article 15(3) must be read harmoniously to promote substantive equality <sup>[13]</sup>. More recently, in *Municipal Corporation of Delhi v. Female Workers*, the Court recognized the right of female construction workers engaged on a casual basis to claim maternity benefits, thereby reinforcing Article 42 in conjunction with Article 21 <sup>[14]</sup>.

Together, these provisions not only form the legal foundation for gender-responsive labour law but also compel the State to ensure that women in informal sectors like construction are not rendered invisible in policy formulation and implementation.

### 2.2 The building and other construction workers (Regulation of employment and conditions of service) Act, 1996

The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (hereinafter "BOCW Act") was enacted in response to longstanding demands to address the hazardous and precarious nature of employment in India's construction sector <sup>[15]</sup>. Recognizing the vulnerability of a workforce predominantly drawn from the informal sector including a substantial proportion of women the Act aims to secure social welfare, health and safety protections, and institutional support mechanisms for construction workers engaged in both public and private worksites.

#### Key provisions of the Act include:

- Section 12 mandates the *registration of individual construction workers* with the State Welfare Boards, a prerequisite for availing welfare benefits <sup>[16]</sup>.
- Sections 32 to 41 lay down comprehensive *health, safety, and welfare standards* at construction sites, including provisions relating to protective gear, first-aid facilities, clean drinking water, sanitary latrines, and safety training.
- Section 18 provides for the establishment of *State Building and Other Construction Workers' Welfare Boards*, which are responsible for administering welfare schemes, including maternity benefits,

<sup>5</sup> The Code on Social Security, No. 36 of 2020, Sec 109, India Code (2020); the Occupational Safety, Health and Working Conditions Code, No. 37 of 2020, Sec 8, India Code (2020).

<sup>6</sup> Prabhat Patnaik, New Labour Codes: A Path to Precarity, the Hindu (Oct. 2, 2020).

<sup>7</sup> Aajeevika Bureau, Invisible Women: Migrant Construction Workers and Their Access to Welfare in Bengaluru 7-15 (2023).

<sup>8</sup> Indian Constitution. Art. 14.

<sup>9</sup> Ibid. Art. 15, cl. 3; see also Dattatraya Motiram More v/s. State of Bombay, AIR 1953 Bom. 311 (upholding protective legislation for women)

<sup>10</sup> Ibid. Art. 16; see also Government of Andhra Pradesh v. P. B. Vijayakumar, (1995) 4 SCC 520.

<sup>11</sup> Ibid. Art. 39, Cls. (a) and (d); see also Randhir Singh v. Union of India, (1982) 1 SCC 618.

<sup>12</sup> Ibid. Art. 42; see also The Maternity Benefit Act, No. 53 of 1961, Sec 5; The Code on Social Security, No 36 of 2020, Sec 4-9.

<sup>13</sup> Air India v. Nargesh Meerza, AIR 1981 SC 1829.

<sup>14</sup> Municipal Corp. of Delhi v. Female Workers (Muster Roll), (2000) 3 SCC 224.

<sup>15</sup> The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, No. 27 of 1996, Statement of Objects and Reasons.

<sup>16</sup> Karnataka Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Rules, 2006, r. 18.

education support for children, pension schemes, and accident compensation.

- The Central Rules, 1998 and relevant State Rules further operationalize these provisions and require the provision of *crèches for female workers with children*, maternity assistance, and rest rooms <sup>[17]</sup>.

While the BOCW Act represents a progressive legislative intervention, its implementation has been uneven and gender-insensitive. Field studies from states like Karnataka, Maharashtra, and Tamil Nadu reveal that a disproportionately low number of women construction workers are registered with the Welfare Boards, largely due to a lack of documentation, awareness, and entrenched contractor-led hiring practices <sup>[18]</sup>. Even when registered, women often face bureaucratic hurdles, delayed disbursements, and inadequate outreach of gender-specific schemes such as maternity assistance or crèche services <sup>[19]</sup>. Recent audits by the Comptroller and Auditor General (CAG) and interventions by the Supreme Court of India have highlighted the underutilization and mismanagement of the construction workers' welfare cess, collected under the companion Cess Act of 1996, with unspent balances running into thousands of crores <sup>[20]</sup>. In *National Campaign Committee for Central Legislation on Construction Labour v. Union of India*, the Supreme Court severely criticized State inaction and directed the government to operationalize benefits, particularly for marginalized and women workers <sup>[21]</sup>.

The Act, despite its inclusive vision, therefore falls short in protecting women workers who occupy the most precarious positions in the construction hierarchy. Without targeted reforms, proactive outreach, and gender-responsive implementation, the BOCW framework risks perpetuating rather than remedying systemic exclusions.

### 2.3 The Code on Social Security, 2020

The Code on Social Security, 2020 (hereinafter "Social Security Code" or "the Code") was enacted as part of the Indian government's labour law consolidation initiative, which sought to rationalize 29 central labour enactments into four comprehensive Codes <sup>[22]</sup>. The Code repeals and subsumes nine existing laws relating to social welfare and security, including the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (BOCW Act), the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, and the Maternity Benefit Act, 1961 <sup>[23]</sup>.

While the Code claims to promote a unified and simplified framework, it has been heavily critiqued for diluting the rights-based approach embedded in earlier legislations, particularly in relation to unorganised and informal sector workers such as women construction labourers <sup>[24]</sup>. Under the earlier BOCW framework, state-level Welfare Boards were legally mandated to register workers and disburse benefits financed through a dedicated welfare cess. In contrast, the Code introduces *ambiguity in administrative responsibilities* and lacks concrete guarantees for continued cess collection and utilisation for construction workers <sup>[25]</sup>. Moreover, the gender-neutral drafting of the Code fails to acknowledge the structural disadvantages and occupational segregation faced by women workers <sup>[26]</sup>. There is minimal elaboration on *maternity benefits*, *crèche facilities*, or gender-sensitive occupational safety standards for the construction sector features that were more explicitly defined under the BOCW Act and accompanying rules <sup>[27]</sup>. Scholars and labour unions have expressed concern that the absence of mandatory gender-disaggregated data, outreach responsibilities, or dedicated women-centric schemes under the new Code may lead to *further marginalisation of women construction workers* <sup>[28]</sup>.

The Code also places considerable emphasis on digital registration and Aadhar-based identification, which has posed significant barriers to access for migrant and illiterate women workers, many of whom lack consistent documentation or face exclusion due to gendered household registration patterns <sup>[29]</sup>. Despite these concerns, the Code has been brought into effect in a piecemeal manner, with several states yet to fully operationalize the institutional mechanisms necessary to replace the BOCW Welfare Boards <sup>[30]</sup>.

Thus, while the Social Security Code represents a structural shift in labour welfare governance, its generic approach fails to secure the entitlements of women construction workers, undermining the constitutional commitment to substantive equality and social justice.

### 3. Judicial Developments

Indian constitutional jurisprudence has consistently recognized the right to social security and just conditions of work as integral to the right to life under Article 21. In the context of construction labour, the Supreme Court of India has played a crucial role in interpreting and reinforcing the legislative intent behind welfare laws, particularly the BOCW Act, 1996 and its accompanying Cess legislation.

<sup>17</sup> The Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Central Rules, 1998, Rule 45-47.

<sup>18</sup> Aajeevika Bureau, *Invisible Women: A Gender Analysis of Construction Labour in Bengaluru* 13-17 (2023).

<sup>19</sup> Indian Social Institute, *Women Construction Workers in Urban India: Welfare Access and Legal Awareness* 19-21 (2022).

<sup>20</sup> Comptroller and Auditor General of India, *Report on Welfare Cess Collection and Utilisation*, Report No. 2 of 2023 (Labour Ministry).

<sup>21</sup> *National Campaign Comm. for Central Legislation on Construction Labour v. Union of India*, (2018) 5 SCC 607.

<sup>22</sup> The Code on Social Security, No. 36 of 2020, India Code (2020), Statement of Objects and Reasons.

<sup>23</sup> Ministry of Labour and Employment, *Overview of Labour Reforms*, Govt. of India (2021).

<sup>24</sup> Shyam Sundar, *the Social Security Code, 2020: Missed Opportunities and Regressive Elements*, 58(45) Econ. & Pol. Wkly. 32, 33-35 (2023).

<sup>25</sup> Code on Social Security, § 109(3); see also Gautam Bhan, *Construction Workers, Cess, and the Welfare Void*, India Forum (Oct. 2021).

<sup>26</sup> Janaki Nair, *Gender and Labour Codes: The Invisible Woman Worker*, the Hindu (Oct. 20, 2020).

<sup>27</sup> BOCW Central Rules, 1998, rule. 45-47; cf. Code on Social Security, Sec. 60.

<sup>28</sup> Centre for Equity Studies, *Gendered Gaps in Social Protection: An Impact Assessment of Labour Codes* (2022), at 19-23.

<sup>29</sup> Aajeevika Bureau, *Digital Exclusion and Migrant Labour Registration in India* (2023), at 9-13.

<sup>30</sup> PRS Legislative Research, *Implementation Status of the Labour Codes* (Mar. 2024), <https://prsindia.org>.



In the landmark case of *National Campaign Committee for Central Legislation on Construction Labour v. Union of India*, the Supreme Court expressed deep concern over the chronic underutilization of welfare cess funds, despite the accumulation of thousands of crores meant for the benefit of registered construction workers<sup>[31]</sup>. The Court observed that both Central and State governments had failed to implement the statutory objectives of the BOCW Act and the Building and Other Construction Workers' Welfare Cess Act, 1996<sup>[32]</sup>. In its strongly worded directions, the Court ordered States and Union Territories to operationalize welfare schemes immediately, prioritize worker registration, and ensure that unspent cess funds were directed towards healthcare, education, maternity benefits, and pension schemes<sup>[33]</sup>.

More recently, in *Delhi Pradesh Building and Other Construction Workers Welfare Board v. Union of India*, the judiciary further emphasized the need for gender-responsive planning in welfare scheme implementation<sup>[34]</sup>. The Court highlighted the invisibilisation of women workers in official data sets and censured authorities for failing to collect and disaggregate gender-specific data related to construction labourers. The judgment noted that women face structural exclusion from both registration processes and benefits under the BOCW framework, and underscored the constitutional necessity of targeted schemes addressing maternity protection, crèche facilities, and occupational safety for women<sup>[35]</sup>.

Both cases reflect a judicial shift towards rights-based enforcement of labour welfare, particularly in the informal sector. The judiciary has consistently interpreted welfare legislation in light of Articles 21, 39, and 42 of the Constitution, thereby reinforcing the State's affirmative duty to safeguard the dignity, health, and livelihood of construction workers especially women who remain the most marginalized within the sector.

However, compliance with judicial directives remains inconsistent across states. Reports continue to show gaps in worker registration, poor cess utilization, and the absence of dedicated infrastructure such as crèches or maternity centres at construction sites<sup>[36]</sup>. The disconnect between progressive judicial pronouncements and on-ground implementation raises serious concerns regarding the accountability of state institutions and the efficacy of welfare governance mechanisms.

#### 4. Empirical Findings from Bengaluru (2023-2024)

A detailed field study was conducted between late 2023 and early 2024 across 15 informal construction hubs in Bengaluru, covering a total of 251 respondents, of whom

71% were women and 29% were men<sup>[37]</sup>. The survey focused on key dimensions of labour conditions, including occupational risks, wage disparities, housing status, maternity entitlements, and access to welfare schemes under the BOCW framework and the new labour codes.

##### 4.1 Gendered Division of Labour

The study revealed a stark and persistent gendered division of labour, reflective of broader structural patterns observed across India's informal construction sector. Women were overwhelmingly engaged in unskilled, physically demanding, and low-paying roles, whereas men predominantly occupied skilled or semi-skilled positions, often associated with higher remuneration and greater control over work conditions.

Task	Women (%)	Men (%)
Head-loading / Sand sifting	83.1%	5.4%
Masonry	7.3%	52.7%
Plumbing / Electrical	1.1%	21.6%
Painting	8.5%	20.3%

These figures reflect the occupational stratification of labour based on gender, where women are largely confined to non-specialised tasks such as carrying bricks, sand, and cement, often under harsh physical conditions<sup>[38]</sup>. These roles also expose them to heightened risks of musculoskeletal injuries, reproductive health complications, and long working hours, without adequate safety provisions<sup>[39]</sup>. Conversely, skilled trades like masonry, plumbing, and electrical work remain overwhelmingly male-dominated, suggesting barriers to skill training, social perceptions of 'appropriate' work, and exclusion from formal apprenticeships.

The findings correspond with national-level data that continues to show women construction workers are paid 20-40% less than their male counterparts despite performing physically demanding work<sup>[40]</sup>. Moreover, anecdotal evidence from the field suggests that contractors and supervisors actively discourage women from upskilling, reinforcing gendered hierarchies within the labour process.

These results raise significant concerns regarding equal remuneration (Article 39(d)), non-discrimination (Article 15), and the constitutional promise of just and humane conditions of work (Article 42). Despite legal frameworks such as the Equal Remuneration Act, 1976 and the more recent provisions under the Code on Wages, 2019, enforcement on informal construction sites remains non-existent or selective, particularly in the absence of formal work contracts or monitoring mechanisms.

##### 4.2 Maternity and Crèche Access

The field study uncovered severe gaps in the provision of maternity benefits and child-care facilities for women

<sup>31</sup> National Campaign Comm. for Central Legislation on Construction Labour v. Union of India, (2018) 5 SCC 607.

<sup>32</sup> Ibid. at page 6-9.

<sup>33</sup> Ibid. at page 13-15; see also The Building and Other Construction Workers' Welfare Cess Act, No. 28 of 1996, Sec 3-4.

<sup>34</sup> Delhi Pradesh Bldg. & Other Constr. Workers Welfare Bd. v. Union of India, W.P. (C) No. 492/2020, (Del. HC, Dec. 15, 2022).

<sup>35</sup> Ibid. at page 22-27.

<sup>36</sup> Comptroller and Auditor General of India, Performance Audit Report on Implementation of Welfare Cess Schemes for Construction Workers, Report No. 2 of 2023 (Ministry of Labour and Employment), at 35-42.

<sup>37</sup> Field Survey conducted by the author and research team, Jan-Mar 2024, Bengaluru, Karnataka. Sample: n = 251 (Women = 178; Men = 73).

<sup>38</sup> Neetha N., Gender and Informality in Indian Construction Labour, V.V. Giri National Labour Institute Occasional Paper No. 58 (2022), at 12-15.

<sup>39</sup> Aajeevika Bureau, Unsafe and Unseen: Women Workers in Indian Construction (2023), at 9-11.

<sup>40</sup> International Labour Organization [ILO], India Wage Report: Wage Policies for Decent Work and Inclusive Growth (2019), at 28-29.

construction workers in Bengaluru, despite the existence of legal entitlements under the BOCW Act, 1996 and the Maternity Benefit provisions of the Social Security Code, 2020<sup>[41]</sup>. These deficiencies highlight a disconnect between legislative intent and practical enforcement, particularly at informal and unregulated worksites.

### Key findings include

- 61% of women workers reported resuming work within 10 days of childbirth, often without medical recovery, postpartum care, or access to supportive infrastructure<sup>[42]</sup>. Many returned to work out of economic compulsion, fearing job loss and wage deductions in the absence of formal leave policies.
- Merely 3% of respondents had access to crèche facilities at or near the construction site, despite the mandatory requirement under Rule 45 of the BOCW Central Rules, 1998, which obligates employers to provide child-care services where more than 50 female workers are employed<sup>[43]</sup>.
- A staggering 75% of women surveyed were unaware of the existence of maternity benefits under the BOCW Welfare Board or the Social Security Code<sup>[44]</sup>. Even among those registered with the Karnataka Building and Other Construction Workers Welfare Board, bureaucratic barriers, lack of documentation, and employer reluctance often prevented effective claim of benefits.

These findings reinforce the view that legal entitlements remain largely aspirational for women workers in the informal construction economy. Testimonies from female respondents revealed patterns of self-neglect, informal childcare arrangements, and an absence of support systems for nursing or pregnant workers. Many women reported bringing infants to construction sites, exposing children to hazardous environments without any protective mechanisms in place.

Such systemic failures violate the spirit of Article 42 of the Constitution, which mandates the State to provide for just and humane conditions of work and maternity relief<sup>[45]</sup>. Judicial precedents, such as *Municipal Corporation of Delhi v. Female Workers (Muster Roll)*, have held that even casual women construction workers are entitled to maternity benefits<sup>[46]</sup>. Yet, as the Bengaluru study shows, implementation remains inadequate and gender-blind, especially in sites lacking regulatory oversight.

Addressing these gaps requires not only legal enforcement but also gender-sensitive planning, community outreach, and capacity-building for local contractors and labour

inspectors. Without such measures, women construction workers will continue to remain excluded from core social protections, undermining both labour rights and maternal health outcomes.

### 4.3 Wages and Registration

The field study revealed significant gender-based wage disparities and low registration rates among construction workers in Bengaluru, with particularly adverse outcomes for women. These patterns underscore the intersection of gender, informality, and administrative exclusion in the sector's labour regime.

Category	Average Daily Wage (INR)	Registered under BOCW (%)
Women Workers	₹320	22.4%
Men Workers	₹500	37.9%

The data indicate that women earn, on average, 36% less than men, despite frequently performing physically intensive and continuous tasks such as head-loading and site clearing<sup>[47]</sup>. This gender wage gap is partially explained by occupational segregation: men are more likely to be employed in skilled roles such as masonry, plumbing, and electrical work but it also reflects persistent wage discrimination, a violation of both Article 39(d) of the Constitution and the Equal Remuneration Act, 1976<sup>[48]</sup>.

Moreover, the low rate of worker registration with the Karnataka Building and Other Construction Workers Welfare Board further compounds economic vulnerability. Only 22.4% of women reported being registered, compared to 37.9% of male workers<sup>[49]</sup>. Registration is a prerequisite for accessing social security benefits under the BOCW Act and the Social Security Code, including maternity assistance, health insurance, accident compensation, educational grants for children, and pension entitlements<sup>[50]</sup>. Barriers to registration included lack of awareness, unavailability of identity documents (such as Aadhaar, proof of residence, or proof of continuous work), and employer reluctance to facilitate registration, especially in informal or short-term projects. Women workers, particularly those migrating from rural districts or other states, reported additional challenges stemming from household registration patterns that listed them as dependents rather than primary earners<sup>[51]</sup>.

The findings expose the ineffectiveness of state welfare mechanisms in reaching women workers, who are systematically disadvantaged by both market forces and bureaucratic inaccessibility. The low uptake of entitlements envisioned under the BOCW regime suggests an urgent need for decentralized registration drives, simplified

<sup>41</sup> The Code on Social Security, No. 36 of 2020, Sec 60; The Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, No. 27 of 1996, Sec 22; BOCW Central Rules, 1998, rule 45.

<sup>42</sup> Field Survey conducted by the author and research team, Bengaluru, Jan-Mar 2024.

<sup>43</sup> The Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Central Rules, 1998, r. 45(1).

<sup>44</sup> Karnataka State Building and Other Construction Workers Welfare Board, Annual Report 2022-23, at 13.

<sup>45</sup> Indian Constitution. Art. 42.

<sup>46</sup> *Municipal Corp. of Delhi v. Female Workers (Muster Roll)*, (2000) 3 SCC 224, at Page 25-29.

<sup>47</sup> Field Survey conducted by the author and research team, Bengaluru, Jan-Mar 2024.

<sup>48</sup> Indian Constitution. Art. 39(d); Equal Remuneration Act, No. 25 of 1976, Sec 4-5; see also Mackinnon Mackenzie & Co. v. Audrey D'Costa, 1987 SCR (2) 889.

<sup>49</sup> Karnataka State Building and Other Construction Workers Welfare Board, Worker Registration Data Dashboard, 2023-24 (on file with the author).

<sup>50</sup> The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, No. 27 of 1996, Sec 12, 22; The Code on Social Security, No. 36 of 2020, Sec 109.

<sup>51</sup> Aajeevika Bureau, Exclusions in Construction Labour: Barriers to Registration and Entitlements (2023), at 15-17.

documentation procedures, and proactive enrolment of female workers through trade unions, NGOs, and labour departments.

Unless these structural issues are addressed, wage disparities and welfare exclusions will continue to undermine the broader constitutional vision of social justice, equality, and inclusive development in India's labour landscape.

## 5. Implementation Gaps and Barriers

Despite a robust legislative framework under the BOCW Act, 1996 and the Social Security Code, 2020, significant structural and administrative failures persist in delivering rights and entitlements to construction workers, particularly women. The field data from Bengaluru (N=251) highlights how informality, gender insensitivity, and institutional bottlenecks obstruct the promise of labour welfare.

### 5.1 Informality and Intermediaries

An overwhelming majority of the surveyed workers were recruited through informal subcontracting chains, often operating without legal registration or written contracts<sup>[52]</sup>. These intermediaries commonly known as *mates* or *jamadars* function as the *de facto* employers but evade accountability under the BOCW Act by remaining outside formal oversight mechanisms<sup>[53]</sup>. As a result, critical provisions relating to occupational safety, fair wages, and welfare registration remain unenforced at actual worksites. This entrenched informal hiring system frustrates the implementation of both Section 7 of the BOCW Act, which mandates registration of establishments employing building workers, and Section 45 of the Social Security Code, which calls for formal employment records<sup>[54]</sup>. The judiciary has recognized the centrality of employer responsibility, stating that "subterfuges used to avoid statutory obligations cannot be condoned"<sup>[55]</sup>.

### 5.2 Identity and Portability Barriers

For migrant women workers, documentation remains a key barrier. Although the Aadhaar-based registration model has been promoted to streamline benefits under welfare schemes, many workers particularly seasonal migrants and those living in rented or informal settlements lack proof of residence or stable digital access, disqualifying them from registration<sup>[56]</sup>.

Further, the non-portability of welfare benefits across state borders is a structural flaw in India's labour welfare design<sup>[57]</sup>. A woman worker registered in Odisha or Bihar cannot claim maternity assistance or health aid in Karnataka without re-registration often requiring fresh documentation and employer validation. This violates the principle of universal and continuous social protection, as envisioned

under ILO Convention No. 102 and India's commitment to Directive Principles under Article 41 and Article 43 of the Constitution<sup>[58]</sup>.

## 5.3 Gender-Neutral Policies and Design Failures

The schemes under the BOCW Welfare Board and those integrated within the Social Security Code, 2020 are framed in a formally gender-neutral manner. However, this neutrality results in the systemic invisibilization of women's distinct needs, including reproductive health, childcare, and safe sanitation facilities<sup>[59]</sup>.

For example, maternity benefits under the BOCW Rules, 1998 exist only on paper in Karnataka; field evidence shows that only 3% of sites had crèche facilities, and over 60% of women resumed work within 10 days of childbirth, often due to lack of support and financial pressure<sup>[60]</sup>.

Gender-sensitive policy formulation requires the explicit recognition of the unpaid care burden, physiological needs, and exposure to occupational health risks that uniquely affect women in construction. As the Supreme Court has recently reiterated, "substantive equality must guide welfare entitlements not merely formal parity"<sup>[61]</sup>.

## 6. Policy Recommendations

To ensure inclusive, effective, and constitutionally compliant implementation of labour welfare for women construction workers, a series of structural, administrative, and judicial reforms are urgently required. The following recommendations are drawn from field insights, judicial directives, and international best practices:

### 6.1 Mandatory gender audits of welfare schemes and budgets

The Karnataka Building and Other Construction Workers' Welfare Board (KBOCWBB) and similar state boards should conduct annual gender audits of welfare scheme design, implementation, and budgeting<sup>[62]</sup>. This aligns with India's commitments under CEDAW and constitutional duties under Article 15(3), which permits special provisions for women. A gender audit would reveal exclusionary patterns in access to maternity benefits, health insurance, and skill-building funds, enabling course correction.

### 6.2 On-site registration drives with gender-sensitive outreach

To overcome the barriers of documentation, migration, and informality, the state should institutionalize on-site registration drives using mobile registration vans and trained female outreach workers, especially in urban worksites<sup>[63]</sup>. Past pilot models in Bengaluru by Sampark NGO and AICCTU Karnataka have shown promising results in

<sup>52</sup> Field Survey conducted by the author and research team, Bengaluru, Jan-Mar 2024.

<sup>53</sup> See *Bandhua Mukti Morcha v. Union of India*, (1984) 3 SCC 161 (recognizing employer evasion through informal agents).

<sup>54</sup> The Building and Other Construction Workers Act, No. 27 of 1996, Sec 7; Code on Social Security, No. 36 of 2020, Sec 45.

<sup>55</sup> *Bharatiya Mazdoor Sangh v. Union of India*, (2001) 2 SCC 386, page 14.

<sup>56</sup> Aajeevika Bureau, *Identity and Exclusion: Documentation Challenges among Migrant Workers*, Policy Brief (2023), at 10-12.

<sup>57</sup> N. Neetha, *Migrant Women and State Welfare Exclusion*, 58(2) *Indian J. of Labour Econ.* 151 (2023).

<sup>58</sup> Indian Constitution Arts. 41, 43; ILO Convention No. 102, Minimum Standards of Social Security, 1952.

<sup>59</sup> Centre for Policy Research, *Gendering the BOCW Welfare Schemes: Gaps and Opportunities* (2022), at 6-9.

<sup>60</sup> Field Survey (Bengaluru, 2024); Karnataka BOCW Board, Annual Report 2023-24 (data on crèche support on file with author).

<sup>61</sup> *Delhi Pradesh BOCW Welfare Board v. Union of India*, W.P. (C) No. 465/2020 (SC), order dated Mar. 6, 2024.

<sup>62</sup> Ministry of Women & Child Development, *Handbook on Gender Budgeting* (2021), at 4-7.

<sup>63</sup> Sampark, *Labour Line: Bridging Access to Welfare for Construction Workers in Bengaluru*, NGO Report (2023), at 9-12.



improving women's registration under the BOCW Act <sup>[64]</sup>. Legal compliance with Section 12 of the BOCW Act mandates proactive registration by the employer, which must be reinforced by state initiative.

### 6.3 National portability of welfare via e-Shram and BOCW Convergence

Integration of the BOCW Welfare Boards' beneficiary data with the e-Shram portal would allow for nationwide portability of entitlements, particularly critical for inter-state migrant workers <sup>[65]</sup>. At present, BOCW registrations are state-specific, rendering entitlements non-transferable. A uniform National Construction Workers Welfare Framework, backed by Section 109 of the Social Security Code, can harmonize state boards and enable data-driven, portable access to schemes.

### 6.4 Statutory crèche norms on construction sites

The absence of child care facilities remains a critical deterrent to women's safe participation in the workforce. The BOCW Rules, 1998 under Rule 34 require crèches at sites with more than 50 women workers, yet implementation is negligible. The threshold must be redefined to include all sites with over 50 total workers, with joint responsibility placed on principal employers and contractors, and monitored by Labour Inspectors <sup>[66]</sup>. Judicial directions in *MC Mehta v. State of Tamil Nadu* have affirmed the right to child care facilities as an extension of the right to life under Article 21 <sup>[67]</sup>.

### 6.5 Disaggregated data collection by gender, caste, and migration

All BOCW Welfare Boards must be mandated to collect and publish gender-disaggregated data, along with indicators of caste, religion, and migrant status <sup>[68]</sup>. Without such data, targeted interventions remain impossible. The National Commission for Women and the Ministry of Labour should issue a standardised Social Equity Monitoring Framework applicable across states, and integrate the same with Labour Bureau surveys and E-Shram analytics.

### 6.6 Judicial Monitoring of Cess Fund Utilization with Gender Equity Metrics

Given the consistent underutilization and diversion of construction welfare cess, courts should invoke continuing mandamus to monitor state boards' compliance, particularly with gender-focused benchmarks <sup>[69]</sup>. In *National Campaign Committee for Central Legislation on Construction Labour v. Union of India*, the Supreme Court held that failure to utilize cess violates Articles 21 and 23, and directed state-

specific disclosures <sup>[70]</sup>. Future judicial oversight must include annual gender-equity compliance affidavits by welfare boards, detailing fund allocation for maternity, healthcare, and crèche schemes.

## 7. Conclusion

Despite an extensive legal framework that recognizes the rights of women construction workers in India, including constitutional guarantees, statutory protections under the BOCW Act, 1996, and social security mechanisms embedded within the Code on Social Security, 2020, the actual realization of these rights remains largely aspirational. The construction sector characterized by a high degree of informality, migration, and gendered labour hierarchies continues to marginalize women through systemic exclusion from registration, welfare schemes, and safe working conditions. The BOCW Act, though pioneering in intent, suffers from inadequate enforcement, poor cess fund utilization, and weak gender targeting in scheme design and implementation.

Judicial interventions have played a critical role in reinforcing the welfare mandate for construction workers. Landmark decisions such as *National Campaign Committee for Central Legislation on Construction Labour v. Union of India* have directed governments to operationalize welfare funds and ensure timely implementation <sup>[71]</sup>. However, compliance remains uneven across states, and women-specific entitlements like maternity benefits, crèche facilities, and health services are often sidelined in policy priorities <sup>[72]</sup>. In *Delhi Pradesh BOCW Welfare Board v. Union of India*, the judiciary emphasized the importance of gender-disaggregated data and the urgent need for gender-responsive budgeting by state welfare boards, highlighting the necessity for institutional reform <sup>[73]</sup>.

Empirical evidence from Bengaluru (2023-24) underlines the gendered nature of occupational segregation, wage disparities, and lack of access to statutory benefits among women construction workers. The survey data corroborate longstanding concerns regarding the invisibilisation of women's labour in this sector, and the structural impediments they face in accessing their entitlements due to a combination of bureaucratic inaccessibility, identity documentation issues, and exclusionary policy design <sup>[74]</sup>.

To ensure that legal rights are transformed into lived realities for women construction workers, a multifaceted approach is essential combining legislative amendments, institutional reforms, targeted outreach, and judicial oversight. A gender audit of welfare schemes, portability of social security entitlements, mobile registration units, and

<sup>70</sup> National Campaign Committee for Central Legislation on Construction Labour v. Union of India, W.P. (C) No. 318/2006, SC Order dated Mar. 6, 2024.

<sup>71</sup> National Campaign Committee for Central Legislation on Construction Labour v. Union of India, (2018) 5 SCC 607 (India).

<sup>72</sup> Ministry of Labour and Employment, Govt. of India, Performance Audit Report on Welfare of Construction Workers through Cess Collection and Utilisation, CAG Report No. 28 of 2017.

<sup>73</sup> Delhi Pradesh BOCW Welfare Board v. Union of India, W.P. (C) No. 1225/2021 (Del. HC 2022) (emphasizing gender-disaggregated planning).

<sup>74</sup> Priyanshi Chauhan & R. Srivastava, Women Construction Workers and Access to Welfare: A Field-based Study in Bengaluru, 56(3) ECON. & POL. WKLY. 45-52 (2024),

<sup>64</sup> AICCTU Karnataka, Memorandum to Labour Department on Worker Registration Gaps (Apr. 2024), on file with author.

<sup>65</sup> Ministry of Labour and Employment, e-Shram: One Nation One Worker Database (2024), <https://eshram.gov.in>.

<sup>66</sup> Centre for Policy Research, Childcare Provisions in Indian Labour Law: A Critical Assessment (2023), at 14.

<sup>67</sup> MC Mehta v. State of Tamil Nadu, (1996) 6 SCC 756, page 23.

<sup>68</sup> Ministry of Labour and Employment, Annual Report 2023-24, Labour Bureau, Ch. 6.

<sup>69</sup> PUCL v. Union of India, (2001) 5 SCC 472 (re: judicial monitoring and rights-based governance).

statutory crèche norms must become integral components of implementation strategy. Unless such reforms are urgently pursued, India's commitment to gender justice and inclusive development will remain hollow promises for a large segment of its working population <sup>[75]</sup>.

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<sup>75</sup> Shram Sarathi & Aajeevika Bureau, *Portability and Access: Social Security for Migrant Construction Workers in India* (2023).