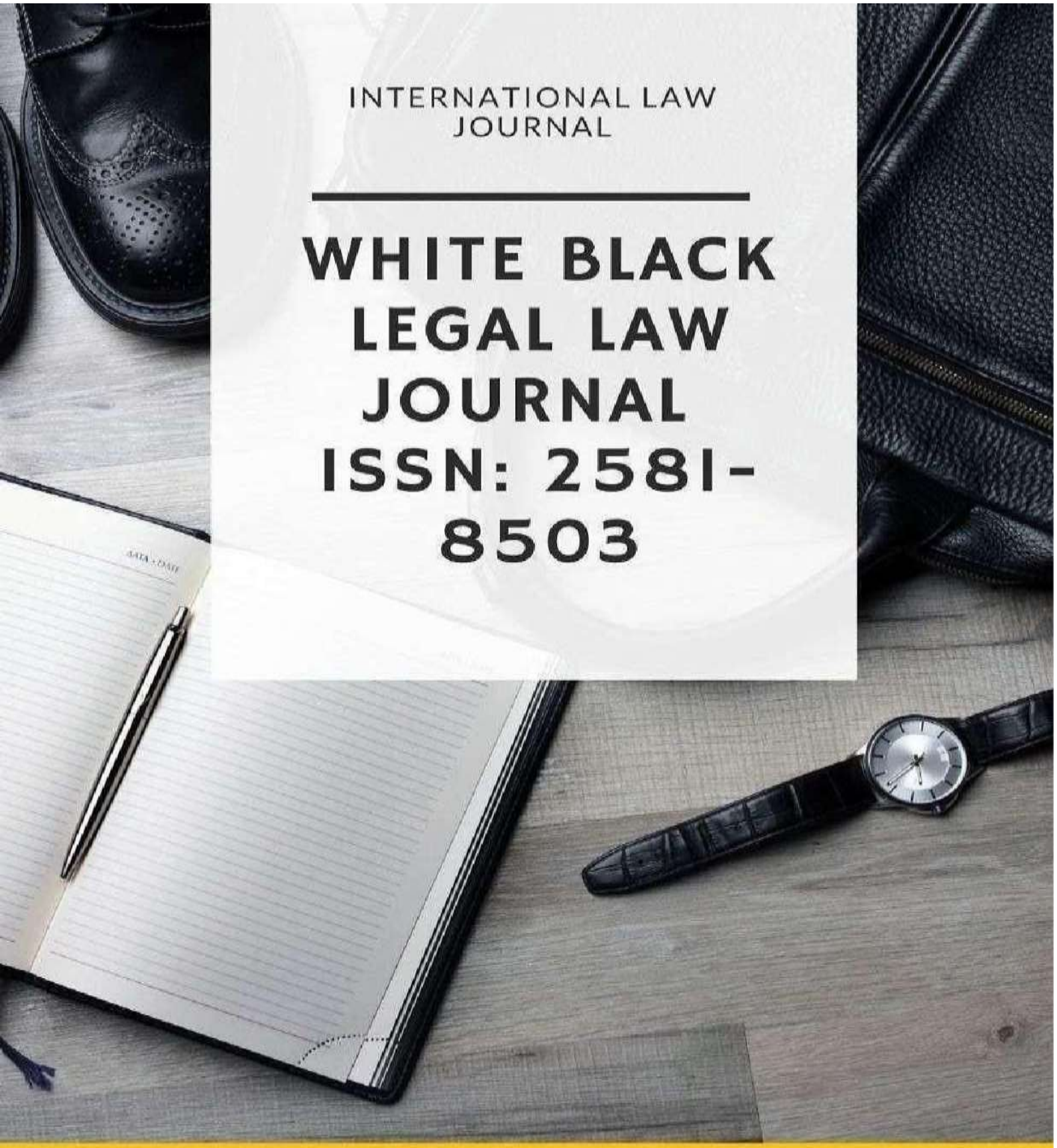

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REVISITING CONSTITUTIONAL PROTECTIONS FOR WOMEN IN INDIA'S INFORMAL ECONOMY: FROM FORMAL EQUALITY TO SUBSTANTIVE JUSTICE

AUTHORED BY - MS.ANJALI GAUR & DR.BHOMA RAM

Abstract

This paper is a critical analysis of the sufficiency of constitutional safeguards that women who participate in the informal sector of the Indian economy have, through the lens of the analytical perspective of the transition between formal equality and substantive justice. Although the Indian Constitution has ensured equality, dignity, and livelihood under Articles 14, 15, 19 and 21, a high percentage of the women workers is still concentrated in the informal sector, like domestic work, agriculture, home-based production, and street vending, where the law lacks strength and enforcement.

The research paper pushes the thesis that the conventional strategy of formal equality, under which all people are equally before the law, does not consider the structural discrimination, the socio-economic vulnerabilities and the intersectional discrimination of women in informal work. The paper demonstrates the role of the judiciary in broadening the fundamental rights to livelihood, dignity, and safe working conditions through an analysis of judicial pronouncements. The paper also analyses the current statutory frameworks (such as labour laws and social security laws) and highlights the loopholes in coverage, access and enforcement to informal women workers. The study highlights the necessity to redefine constitutional protections to be able to attain substantive justice, which does not only entail legal protection but also fair results, by adopting a feminist and rights-based approach. It ends by suggesting a more accommodative and responsive legal system that incorporates constitutional requirements and policy changes, thus guaranteeing meaningful security and empowerment of women in the informal economy in India.

Keywords: Informal economy, women workers, constitutional protection, substantive justice, formal equality, labour rights.

I. Introduction

The informal economy of India has become a new location of work, especially with the thrust of urbanisation, economic restructuring, and constraints of the formal sector in creating job opportunities. One of the major aspects of this change has been the growing involvement of women in informal employment, which is popularly known as the feminisation of labour. Women are overly represented in other spheres like household work, farming, home-based production, street selling and small-scale services where employment is generally unregulated, insecure, and lacks social protection. Structural factors influencing the trend of poverty, illiteracy, discrimination by gender, and socio-cultural norms that limit women to formal employment opportunities influence the trend. Although they play a very important role in the economy, informal women workers remain unheard in policy-making and legal discourse, which are both formal in nature and based on formal employment relationships.

The International Labour Organisation (ILO) has greatly developed the concept of informal economy by defining it as all economic activities of workers and economic units that are not or are inadequately covered by formal arrangements under the law or in practice. These are self-employed people, casual workers and those in unregistered businesses who do not have any legal status or protection. In the case of women, the informal economy can be both a possibility and a limitation: on the one hand, it offers them a chance at earning money when they do not have a formal job, on the other hand, it puts them at risk of being exploited, poorly paid, deprived of a job security, and subjected to unsafe working conditions. Their invisibility is a compounded issue due to the intersection of gender, class and caste, leading to the marginalisation of the person in more than one way[1].

Research Problem

Legal invisibility is the issue that is at the centre of the problems encountered by women in the informal economy. Although there are constitutional guarantees like equality before the law, outlawing discrimination and the right to livelihood, in most cases, they do not translate into any meaningful results for informal women workers. The Indian legal system, such as labour laws

[1] International Labour Organization, Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), *in* INTERNATIONAL LABOUR CONFERENCE, 104th Session (2015).

and welfare legislations, has traditionally had the formal sector in mind, thus excluding a large majority of workers. In many cases, even where the laws exist, the problem of implementation, ignorance and inefficiency in administration are barriers to their effectiveness. Consequently, informal women workers still have vulnerabilities in terms of wage exploitation, no maternity benefits, no occupational safety and no access to social security programs.

Research Objective

This study aims to critically analyse the issue of whether the constitutional structure in India is sufficient to consider the realities of women in the informal economy. The main aim here is to examine how far the constitutional provisions, especially the ones that are concerned with equality and social justice, can guarantee protection and empowerment among informal women workers. It also seeks to assess the difference between the formal legal assurances and their realisation, by paying special attention to structural and institutional obstacles that make it impossible to achieve substantive justice. By so doing, the study will go beyond a strictly doctrinal study and include a socio-legal approach that takes into consideration the lived experiences of women workers.

Research Question

The study is informed by some main questions that question the effectiveness of constitutional protections in meeting the special needs of informal women workers. It brings up the question of whether the constitutional guarantees currently in place are adequate to protect their rights and whether the notion of formal equality that is enshrined in the legal system reflects the real and substantive justice. These are important questions in the light of the limitations of a rights-based approach, which fails to sufficiently consider socio-economic inequalities and structural discrimination. Through the discussion of these questions, the paper aims at adding to the current debate on gender justice and labour rights in India.

Research Hypothesis

The main argument of this study is that, though the current constitutional safeguards are progressive in nature, they are not sufficient to guarantee substantive justice to women in the informal sector. The substantive justice concept does not only entail the identification of rights,

but it also entails the establishment of circumstances that would facilitate the realisation of the rights. This encompasses the issue of structural inequities, access to resources, as well as specialised assistance to marginalised groups. The inability to accomplish these goals points to the necessity to reconsider the constitutional framework and its implementation in the framework of informal labour.

Research Methodology

Regarding methodology, the study employs both a doctrinal and an analytical approach, and utilises both primary sources (constitutional provisions, statutes, and judicial decisions) and secondary sources (academic literature, policy reports, and empirical research). A comparative view, where appropriate, is also included in the study to conclude international practices and frameworks. The study is quite descriptive and restricted to the Indian setting, particularly women who are involved in the informal economy and is not an in-depth empirical study. But it attempts to give a broad insight into the legal and structural issues surrounding this group of the workforce, and proposes avenues of reform that are in line with the principles of substantive justice.

II. Theory: Formal Equality and Substantive Justice

The difference between the concepts of formal equality and substantive justice is the source of the current constitutional and feminist legal discourses concerning the marginal groups, like women, in the informal economy. Formal equality, based on classical liberalism, stresses equal treatment before the law by requiring that similar cases be treated similarly. It is based on the concept of neutrality, where laws and policies are made non-discriminatory in their nature, and they are equally applied to everyone, irrespective of their socio-economic and cultural statuses. The concept is echoed in the provisions of the Indian constitution, including Articles 14, 15 and 16, which provide equality before the law and outlaw discrimination based on certain grounds. But formal equality does not seem to take into consideration the structural inequalities which already exist, and this makes its use insufficient in the lived conditions of disadvantaged populations such as women in informal labour[2].

[2]chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.indiacode.nic.in/bitstream/123456789/19150/1/constitution_of_india.pdf

Substantive equality, in contrast, goes beyond the equal application of laws and aims to have equitable results by addressing systemic disadvantages. It recognises that people are not equally positioned because of historical, social and economic factors, and as such, they should be treated differently or given positive measures that will guarantee true equality. Substantive justice, therefore, advocates policies of reservations, special welfare plans and protective labour laws to create a more even playing field. This can be supported in the Indian law under Articles 15(3) and 39, which authorises the State to include special provisions for women and enhance social and economic justice. Substantive equality is not only focused on the formal access to rights, but the real ability of individuals to implement the rights meaningfully.

The feminist legal theory plays a major role in this discussion as it is used to critique the constraints of formal equality and support the more refined view of justice that takes into account gendered experiences. It disputes the notion that laws are neutral and how the legal systems tend to reproduce and enforce patriarchal standards. According to feminist scholars, formal equality will be a far-fetched reality in the absence of dealing with the structural barriers that women are subjected to, including doing unpaid care work, inaccessibility to resources, and socio-cultural limitations. Moreover, intersectionality, as proposed by Kimberlé Crenshaw, adds to this analysis by looking at how various levels of identity intersect to create multiplexed forms of disadvantage, such as gender, caste, class, and religion[3]. These overlapping vulnerabilities tend to leave women in the informal sector of India without either the protection of the law or social security, as well as the support of the institution.

Another area where the applicability of this conceptual framework can be well seen is in the case of informal sector women workers, who are a very big but very hidden part of the labour force. These women often work beyond the confines of formal labour legislation and job security, fair wages, and safe working conditions, despite constitutional provisions to this effect. They are not only marginalised economically, but also legally, because the current system is inclined to focus on formal employment relationships. A substantive equality lens requires a re-assessment of the legal and policy strategies with a view to making them sensitive to the needs and plight of informal women workers. This involves the need to acknowledge and value the unpaid and home-based work, expanding the social protection system, and also to overcome the

[3] Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1991).

socio-cultural barriers that obstruct their access to justice. The move towards substantive justice, rather than formal equality, therefore, is vital towards the realisation of the transformative potential of the Constitution and the meaningful inclusion of women in the informal economy.

Characteristics and Nature of Women's Work in the Informal Economy

The work of women in the informal economy in India is extensive, varied, and an integral part of a socio-economic fabric, but it is mostly not visible in the legal and policy systems. The informal economy is a broad field of occupations that are defined by a lack of formal contracts, social security benefits, and formal working conditions. Women are a large percentage of the workforce in this space, mostly working in unprotected forms of work, low-paid and labour-intensive jobs. The most evident type is domestic work, wherein women are hired in private homes to do chores like cleaning, cooking and taking care of the home. Although they are needed to perform the essential work, the domestic workers are not regularly considered as workers, according to the labour laws, which exposes them to arbitrary pay, extended hours at work, and exploitation. Their labour is usually underestimated as it is linked with the traditional gender roles and supports the idea that this type of work is the continuation of the unpaid housework of women, but not the economic one[4].

Another important type of informal work that is performed by women, especially in the city, is street vending. Women hawkers market fruits, vegetables, cooked food and small commodities, and their business is conducted in crowded areas, with no security of tenure or legal safeguards. The threat of eviction, harassment by local authorities and seizure of goods threatens them all the time, thus undermining already weak livelihoods. Likewise, women have a large percentage of workers in the agricultural sector, particularly in the rural regions. Some of the activities they are involved in include sowing, weeding, harvesting and taking care of livestock. Nevertheless, their work is often under the label of family labour or subsidiary work, which means that they are not paid or officially recognised. This invisibility keeps perpetuating gender incomes and restricts access to institutional support of credit, insurance and training to women.

Another important area of informal employment among women is home-based work, mostly by women who are limited by social conventions or household duties. Such workers are involved in handicrafts, garment sewing, beedi rolling and packaging, which is usually done through

[4] INT'L LABOUR ORG., *Women and Men in the Informal Economy: A Statistical Picture* (3d ed. 2018).

subcontracting chains. This may offer flexibility in work, but it also deprives workers of the collective bargaining measures and leaves them vulnerable to the exploitation of the intermediaries who control the payment and production terms. The digital economy has also broadened the informal employment sector on other platforms of gig employment, where women can be hired as delivery agents, beauticians, or freelance services. Despite the flexibility provided by gig work, which is often described as empowering, it can often be a lack of job security, foreseeable earnings, and social protection, replicating most of the vulnerabilities of traditional informal work.

Structural vulnerabilities of women in the informal economy are complex and embedded. The problem of wage inequality has been a thorn in the flesh, and women have always been paid less than their male counterparts despite having done the same or more work than men. Occupational segregation, weak bargaining power, and discriminatory social norms are some of the factors that affect this disparity. In addition, employers are able to take advantage of women workers by paying late, deducting at will, and withholding benefits due to the lack of formal contracts and regulatory controls. Another severe issue is the absence of social security since the majority of women in the informal sector lack health insurance, maternity benefits, pension and unemployment benefits. This exposes them especially to economic shocks, health crises and life-cycle risks, a cycle of poverty and insecurity.

The issue of occupational hazards is a major but, in many cases, neglected issue of informal work. Women doing housework could be exposed to toxic cleaning products, and physically strenuous activities, and the workers in agriculture could be at risk due to exposure to pesticides, harsh weather conditions and poor sanitation facilities. Workers working at home usually work in small and stuffy areas, which may cause chronic health problems. This is especially true in the case of street vendors who are subjected to persistent pollution, inadequate access to clean water, and the physical stress of long hours of work, which aggravates health risks. Nevertheless, there has been little access to occupational health and safety measures, even though this is part of the overall disregard of informal workers in policy frameworks.

Another widespread aspect of the vulnerability of women in the informal economy is sexual harassment and exploitation. Lack of official work organisation and redressal mechanisms for grievances means that women can hardly report abusers or find justice. The high risk is especially in domestic workers because their places of work are private and unregulated.

Harassment by authorities, employers and co-workers is also a common experience of street vendors as well as agricultural workers, which is usually exacerbated by their socio-economic marginalisation. Threat of retaliation, loss of livelihood and social stigma compel women even more to not claim their rights, which sustains a culture of silence and impunity.

The fact that women dominate the informal sector is statistically important to highlight the urgency of the need to address the problems. With a very large proportion of working women in India working in informal or unorganised sectors, it is not only an indication of the scarcity of formal job opportunities but also the socio-cultural restrictions of women getting involved in the labour market. Such a concentration of informal labour not only reduces the economic mobility of women, but also weakens their access to the law and institutional resources. These issues are further aggravated by the interplay between gender and other issues like caste, class and rural-urban differences and present complex layers of disadvantage that cannot be mitigated using homogeneous policy responses.

Essentially, the nature and the features of women's work in the informal economy show a sophisticated interplay of the economic need, social norms and structural inequalities. Although the informal sector offers essential livelihood services to millions of women, it also contributes to their vulnerability and marginalisation. These dynamics are critical in influencing the creation of legal and policy frameworks that extend beyond formal recognition of women to deal with the substantive realities of their work with dignity, security and equal opportunities in the labour market.

Constitutional Framework to Protect Women Workers

a. Fundamental Rights

The Indian protection of women employees is constituted in the constitutional framework of the Fundamental Rights as expressed in Part III of the Constitution that seeks to guarantee equality, dignity and freedom of all people. These rights are the basis of legal protection of women who are involved in the formal and informal sectors, but their very implementation is not always balanced. Article 14 guarantees equality before the law and equality in the protection of the laws, as it provides a grounding principle that the State does not discriminate arbitrarily between individuals[5]. This provision theoretically ensures that women workers, especially those in the informal sector, are treated equally in terms of employment, wages, as well as working

[5] INDIA CONST. art. 14.

conditions. Nevertheless, the realisation of this right is affected by structural inequalities and socio-economic disadvantages, which tend to impede its successful enforcement, and therefore, a more subtle meaning that transcends the formal equality is required.

Article 15(1) forbids discrimination based on sex, among others, thus underpinning the agenda of gender equality[6]. Simultaneously, Article 15(3) also gives the State the authority to make special provisions for women and children, thus acknowledging the necessity of protective discrimination to deal with the historical and social disparities[7]. This two-fold method is a constitutional interpretation that same treatment does not necessarily lead to equal results, particularly to marginalised women workers who are vulnerable due to intersecting vulnerabilities in terms of class, caste, and occupation. Article 15(3) offers the constitutional foundation of welfare policies, labour policies and affirmative action policies to better the conditions of women workers in the informal economy, where legal protections are generally weak or non-existent.

Article 19(1)(g) provides the right to free practice of any profession or to any occupation, trade or business. The provision is especially important to women in the informal sector, who are proven to have their autonomy to participate in other types of livelihood, such as domestic work, street vending, home-based production, and gig work[8]. Yet, this freedom is not an absolute freedom but is subject to reasonable restrictions in the interest of the general population and at times can be employed to regulate or limit informal economic activity. In reality, women workers usually encounter obstacles in the form of a lack of licensing, intimidation by the authorities, as well as social stigma, which becomes a hindrance to the full realisation of this right. In this way, although Article 19(1)(g) offers an explicit guarantee on occupational freedom, the substantive implementation needs to be supported by legal and policy frameworks.

Article 21, which ensures the right to life and personal liberty, has been used broadly by the judicial system to mean the right to live with dignity and the right to livelihood[9]. These interpretations have played a significant role in granting constitutional protection to the economically disadvantaged, such as women in the informal sector. In ***Olga Tellis v. Bombay Municipal Corporation***[10], the Supreme Court acknowledged that the right to livelihood is a part

[6] INDIA CONST. art. 15, cl. 1.

[7] INDIA CONST. art. 15, cl. 3.

[8] INDIA CONST. art. 19, cl. 1(g).

[9] NDIA CONST. art. 21.

[10] Olga Tellis v. Bombay Mun. Corp., (1985) 3 SCC 545 (India).

and parcel of the right to life under Article 21[11]. The case covered the eviction of pavement dwellers in Mumbai, where a large number of them depended on informal employment to earn a living. The Court believed that taking away their means of livelihood was tantamount to taking away their right to live and thus, procedural fairness and humane treatment were necessary. This ruling has far-reaching consequences to women in the informal economy who are in the workforce because it highlights the constitutional role of the State in ensuring that their means of livelihood are safeguarded.

Another historic case, the ***Vishaka v. State of Rajasthan***[12] case, was the breakthrough in the acceptance of the rights of women in the workplace. The issue that the Supreme Court dealt with in this case was the sexual harassment in the workplace, and that the harassment is unlawful under the Fundamental Rights guaranteed under Articles 14, 15, 19(1)(g) and 21. Having no particular law then, the Court formulated the Vishaka Guidelines, which provided a pattern of preventing and handling sexual harassment in the working environments throughout the nation. These were enforceable provisions that covered both the formal and informal sectors, hence afforded protection to women workers who were not otherwise covered by the statutory provisions. The judgment emphasised the significance of a safe and dignified working environment as a condition for the meaningful exercise of constitutional rights.

Article 23 outlaws transportation of human beings and involuntary labour, such as begar and other types of exploitation[13]. This is especially applicable to women in the informal economy, where in many cases, they are victims of exploitative labour practices that may include bonded labour, underpayment, and forced working conditions. The constitutional ban on forced labour places a positive duty on the State to detect, prevent and remedy such a practice. Article 23 is an important protection to women workers, particularly those in marginalised communities, against extreme economic exploitation and abuse.

These Fundamental Rights offer an elaborate constitutional framework with an aim of safeguarding the rights and dignity of women workers. The success of this framework, however, lies in the way it is interpreted and applied by the judiciary, the legislature and the executive. Although judicial interventions of such cases as Olga Tellis and Vishaka have greatly broadened the area of constitutional protection, the gaps can still be observed in the translation of the rights

[11] INDIA CONST. art. 21.

[12] Vishaka v. State of Rajasthan, (1997) 6 SCC 241 (India).

[13] INDIA CONST. art. 23.

into the real benefits of women in the informal sector. The entrenched nature of gender-based discrimination, the absence of legal avenues, and poor enforcement mechanisms have still hindered the achievement of substantive justice. Thus, although the Constitution provides a solid normative base, there is a vital necessity for more inclusive and context-dependent strategies that could guarantee that women workers, especially those in the informal sector, would be able to exercise their constitutional rights to the fullest.

B. Principle of State Policy Directive

A welfare-oriented system of safeguarding women workers, especially those in the informal sector, is extremely dependent on the Directive Principles of State Policy (DPSPs), which are contained in Part IV of the Indian Constitution. Though they are not justiciable, that is, not directly enforceable by a court, these principles are nonetheless central to the way the country is run and create a burden on the State to enforce them in the formulation of the law and policies. The DPSPs mirror the social and economic democratic vision as they complement the Fundamental Rights and show the direction in which the State should be developed to attain substantive justice, in particular the marginalised and vulnerable groups (women workers).

Article 38 instructs the State to advance the welfare of the people by achieving a social order where justice, social, economic and political, is pervasive in all institutions of national life. This provision highlights the minimisation of disparities in income, status, facilities and opportunities, which is especially pertinent to the women involved in informal labour who tend to be systemically disadvantaged. Article 38, by championing a fair social structure, offers a constitutional foundation to policies that seek to empower women workers, deal with wage differences, and enhance social security and basic services accessibility[14].

Article 39 also elaborates the duties of the State with the formulation of certain principles of policy. The State is guided by the provision of Clause (a) to ensure that both men and women have equal rights to the means of livelihood. This is particularly important in the informal economy where the work of women has generally been undermined, underpaid, and their value has not been acknowledged. The clause (d) puts emphasis on the principle of equal pay for equal work for both the male and the female gender, which is the long-standing issue of discrimination in wages based on gender. The State is urged in Clause (e) to safeguard the health and strength of men and women workers and to make sure that citizens are not compelled by economic needs to

[14] INDIA CONST. art. 38.

engage in a job that does not suit their age or their strength. All these provisions reiterate the importance of ensuring fair and humane conditions of work, especially for women, who are usually clustered in low-paying and dangerous jobs[15].

Article 41 presents the notion of right to work, education and assistance in the form of the state, in instances of unemployment, old age, sickness and disablement, in accordance with the economic competency of the state. This right is not binding by law, but the desire of the constitution to offer livelihood and social security to all citizens. Article 41 is a valuable guide in the creation of employment schemes and other social protection measures for women in the informal sector who often have no jobs and are also often not provided with welfare benefits.

Article 42 in particular deals with the necessity of fair and human-friendly working conditions and states the necessity of maternity relief. This is a provision that recognises the distinct biological and social needs of women and the significance of protecting the health and well-being of women in the work environment. It has influenced the implementation of different labour laws and policies to provide safe working conditions and take care of women during pregnancy and childbirth. The adoption of such protections is unequal in the informal sector, though, which illustrates the disjuncture between constitutional ideals and ground realities.

Article 43 guides the State to achieve a living wage, a decent standard of life and full enjoyment of leisure and social and cultural opportunities for all workers. This is not just subsistence but a life of dignity and well-being. To women workers, especially those who are on informal and precarious jobs, the living wage has been a far-fetched dream since most still have to earn salaries below minimum wage levels and do not have access to fundamental facilities.

The DPSPs offer, in short, a detailed path forward to the socio-economic rights of women workers and the realisation of substantive equality. They may not be legally binding in a strict sense, but are an important source of inspiration in legislative and policy action and have been increasingly turned to by the judiciary to be used progressively in interpreting Fundamental Rights. Collectively, they solidify the constitutional obligation to establish a just and inclusive society where women workers will live and work with dignity.

[15] INDIA CONST. art. 39.

V. Judicial Interpretation: Extending Constitutional Guarantees

In India, judicial interpretation has been used to bring about a transformative force in extending constitutional protection, especially to marginalised and informal workers, by interpreting socio-economic rights as being part of the fundamental rights paradigm. The judiciary has also filled the gap between the formal guarantees and substantive justice through purposive and progressive interpretation, particularly in Article 21, which has become a storehouse of rights that are fundamental in leading a dignified life. The right to livelihood was specifically identified as a part of the right to life under Article 21 in ***Olga Tellis v. Bombay Municipal Corporation (1985)***[16], where the Supreme Court determined that eviction of pavement dwellers without providing alternative shelter would make them unable to survive. This decision was especially noteworthy because of the informal workers, as it recognised that their economic lives cannot be separated from their constitutional rights and thus broadened the concept of dignity not to be limited to physical existence but to the stability of their livelihood.

On the same note, courts have played a significant role in intervening in cases of safety in the workplace and gender justice to tackle the vulnerability of women in the informal sector. The Supreme Court, which did not find any specific legislation on sexual harassment at the workplace, in ***Vishaka v. State of Rajasthan (1997)***[17], established the Vishaka Guidelines, basing its argument on Articles 14, 15, 19 and 21 and international conventions like CEDAW. The Court saw sexual harassment as an infringement of basic rights to equality, life, and dignity, thus extending constitutional safeguards to workplaces that were previously unregulated, extending to informal sectors. These recommendations later underpinned the creation of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, which illustrates how judicial creativity can drive legislative intervention and institutional change[18].

The judiciary has also played a great role in the identification and implementation of labour rights in the informal sector by its broad interpretation of Articles 21 and 23. In the case of ***Bandhua Mukti Morcha v. Union of India (1984)***[19]**,** the Supreme Court did not see bonded labour as a mere violation of the law but an actual violation of basic rights, specifically the right to life and the outlawing of forced labour. The Court highlighted the duty of the state to find,

[16] Ibid.

[17] Ibid.

[18] Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW].

[19] Bandhua Mukti Morcha v. Union of India, (1984) 3 SCC 161 (India).

liberate, and rehabilitate bonded labourers, who are some of the most vulnerable groups of the informal economy. This case signalled a change towards a more activist judiciary, which is more actively reviewing the application of welfare measures. Similarly, in ***People's Union for Democratic Rights v. Union of India (1982[20]),*** the Court expanded the meaning of forced labour in Article 23 to encompass those cases where employees receive lower wages than the minimum wage, and the Court said that economic compulsion could constitute coercion. This interpretation played a key role in addressing the structural exploitation that was embedded in informal employment, where workers are willing to take up low salaries since they have no other choice. The judiciary, too, has been becoming more sensitive to the plight of domestic workers and other informal labourers who are not covered by the full range of labour protection in recent years. Even though no single landmark judgment has been specifically devoted to domestic workers, in different observations and interim directions, courts have highlighted the need to apply the law, fair wages, and social security to this group of workers. In the opinion of the judiciary, the invisibility and powerlessness of domestic labour, which is frequently undertaken by women, have been pointed out, and the state should step in to control the working conditions and avoid exploitation. These changes show a gradual change in the way the informal labour is no longer viewed as peripheral but as central to the economy, and ought to be given full constitutional protection.

The judicial interpretation has played a significant role in the transformation of constitutional rights into living tools of social justice by extending the rights to the areas of livelihood, dignity, safe working conditions and the right against exploitation. Although the rights of informal workers have been greatly promoted through these interventions, their success would be determined by the regularity of the enforcement and complementary legislative interventions, which underscores the necessity of having a concerted effort to deliver substantive justice.

VI. The Laws to defend Informal Women

The law regulating the working conditions of women in the informal economy of India is characterised by a changing effort by the state to apply social protection and workplace rights to the informal sector, but it is still characterised by structural weaknesses that have impeded the delivery of substantive justice. The Unorganised Workers Social Security Act, 2008, was one of

[20] People's Union for Democratic Rights v. Union of India, (1982) 3 SCC 235 (India).

the first attempts by legislation to appreciate the vulnerabilities of informal workers, which also included women who are involved in domestic work, agriculture and home-based occupations. It aimed to offer a guide to welfare schemes related to life and disability cover, health benefits and old age protection. The Act, however, was more of an enabling act, with the design and implementation of schemes being left to the choice of the central and state governments, thus leading to a patchy and, in many cases, poor coverage[21]. The introduction of the Code on Social Security, 2020, was a major consolidation of labour law and broadening of the definition of a worker to cover the gig and platform workers.[22] Although this is an important improvement in recognising new types of labour, its advantage is still subject to future rule-making and administrative capacity, which casts doubt on its usefulness to precarious and low-paid labour by women. Equally, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, or the POSH Act, was an important step toward ensuring workplace harassment and redressal and the establishment of gender-sensitive grievance mechanisms. It spreads to the formal and informal sectors and requires the establishment of Internal Complaints Committees and Local Complaints Committees, but in the informal economy, it is fraught with challenges, especially a lack of awareness, social stigma and the fact that in most cases of the informal sector, there are no identifiable employers.

In spite of these acts of legislation, there are still major constraints that hinder their transformational nature. One of the key issues here is that the still orientation of labour regulation around formal employment arrangements does not make sense given the fluid, decentralised, and mostly invisible nature of informal work by women. A large number of women employees are not under the protection of the law because of the uncertainty in employment, particularly in gig work, domestic services, and home production. In addition, the enforcement is weak and disjointed and lacks an institutional capacity, inspection system and lacks coordination among authorities. This usually leads to a situation where laws are on paper rather than in practice. The second important constraint is that the benefits coverage and operationalisation of new categories, including gig and platform workers, lack sufficient coverage and operationalisation, and the problem of social security, maternity benefits, and workplace safety is not fully resolved. Moreover, grievance redressal mechanisms are commonly

[21] Unorganised Workers' Social Security Act, No. 33 of 2008, INDIA CODE (2008).

[22] Code on Social Security, No. 36 of 2020, INDIA CODE (2020).

unavailable or inefficient among informal female workers who might have difficulties due to illiteracy, economic dependence, fear of retaliation and ignorance of the law. Therefore, although the legislative framework is an indication of commitment to protect vulnerable workers, its design and implementation lack in terms of providing meaningful and inclusive protection to women in the informal economy, hence the need to be more context-sensitive, enforceable, and rights-based.

VII. Disjunctions between Formality and Ground Reality

The divide between formal equality and reality on the ground has been one of the most unresolved issues in delivering justice to women in the informal economy in India. Although the constitutional system ensures equality in the eyes of the law and the ban on discrimination, these guarantees are usually symbolic when the informal women workers live in a world of exclusion and vulnerability. The rights that are legally recognised do not necessarily come to fruition, especially in an industry that is mostly unregulated and remains unseen by formal governance bodies. Despite the recognition of informal workers in laws and policies, the mechanisms that uphold these policies are weak, fragmented and unreachable, whereby laws give promises that do not correspond with the benefits of informal workers.

The major problem that has led to this gap is the fact that there is no defined employer-employee relationship in the informal sector. Contrary to the formal employment where rights and duties are established and legally binding, the informal employment arrangement is usually casual, temporary or even home-based, and it is hard to determine who is in charge. Domestic employees, street hawkers and gig workers often exist beyond any formal contractual arrangement, which restricts their capacity to assert any protection like minimum wages, social security or safe working conditions. This organisational uncertainty enables employers and middlemen to escape, and they leave workers without any viable solutions to the exploitation or abuse.

Furthermore, ignorance and inaccessibility to justice also contribute to the issue. Most women who do informal work do not know their legal rights or the steps they need to take to take action. In spite of awareness, systemic obstacles like complicated legal procedures, inadequate funding and physical inaccessibility of courts and tribunals discourage them from going to court. The

legal aid systems, despite their existence, tend to be inadequately prepared to tackle the magnitude and particularities of problems experienced by informal women workers. Thus, the rights are not properly used, and the violations are not reported.

This gap between formal and substantive justice is enhanced by socio-economic barriers like poverty, illiteracy and hierarchies that are entrenched in caste. Women in the informal sector are, in most cases, part of marginalised groups, with overlapping disadvantages limiting their bargaining power, and perpetuating exploitation cycles. They are not motivated to exercise their rights due to economic dependency and fear of losing livelihood, and social norms and discrimination limit their agency even more. These institutional inequalities underscore the inefficiency of a strictly formalist view of equality that does not consider the disparities in initial positions and the experiences of living.

Another reason that has led to the existence of this gap is judicial inconsistency. Although the court has, in some cases, assumed a progressive strategy in acknowledging the rights of informal workers, there is still no consistency in the approach of applying labour protections to the full. To illustrate, the legal hesitation to extend the protection of minimum wage to domestic workers in all cases is an indication of a persistent reluctance to upset the traditional concept of work in the domestic setting. Such discrepancies lead to uncertainty and diminish the strength of enforcement of rights and dilute the overall aim of substantive justice.

Overall, the continued existence of these points of difference highlights the weakness of formal equality in highlighting the multifaceted realities of informal women workers. The constitutional guarantees may just be aspirational but not transformative without strong enforcement, contextual sensitivity and structural reforms.

VIII. Intersectional Challenges Faced by Women in the Informal Economy

The issues of women in the informal economy in India are highly stratified to be perceived in terms of gender alone, as they are influenced by the intersecting elements, including caste, class, migration, and location. To Dalit and Adivasi women, gender inequality is amplified by caste-based discrimination, and they are often relegated to the most insecure and stigmatised types of labour, including manual scavenging, sanitation or low-paid agricultural labour. Not only are these women exploited economically, but they are also socially marginalised and abused, and this in itself greatly curtails their access to the law and institutional support. Another

highly vulnerable group of migrant women workers is those who often work in domestic work, construction or informal manufacturing industries where they do not have any identity documentation, secure housing or even access to welfare schemes. They are frequently excluded by their precarious position when it comes to receiving state assistance, and their bargaining power is undermined, which makes them vulnerable to exploitation, wage theft, and unsafe work environments.

These challenges are further increased by the rural and urban disparities. Although most rural women are involved in unpaid agricultural labour or home work that is hardly visible, rural women in urban areas encounter challenges related to the lack of these things: insecure jobs, housing, and public harassment. Although the contexts of the two groups vary, systemic neglect and lack of policy support are evident in both groups. The emergence of the digital and the gig economy has brought with it a new type of vulnerability, especially to women whose work revolves around platforms, which may be delivery services, online sales, or freelance work. As much as these opportunities are usually described as empowering, they often lack job security, social protection, and redressal of grievances, besides subjecting women to digital surveillance and harassment.

Also, unpaid care work often puts women in a disadvantaged position in that women cannot engage in paid labour because of the burden of unpaid care, which further increases their reliance on the economy. Childcare, eldercare, and housekeeping are still underestimated and undiscovered by both legal and economic systems, even though they play a crucial role in the economic operation. This so-called care economy not only limits the mobility and time of women but also reproduces structural inequalities that limit access to education and skill development, and lack of access to better jobs. Therefore, the convergence of gender with caste, migration, geography and emerging economic frameworks forms a web of disadvantage that requires a more focused and inclusive framework of legal and policy action to attain substantive justice to women in the informal sector.

IX. Comparative Perspective

The comparative approach to informal labour protection identifies the gaps in informal labour protection by the constitutional and legal system of India and provides invaluable lessons based on international standards and foreign jurisdictions. The International Labour Organisation (ILO)

has been at the forefront in defining the global discourse on informal labour with the help of various instruments, like the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), which highlights the necessity of having inclusive legal frameworks, social protection, and the need to recognise the rights of informal workers. The ILO strategy is not based on an employer-employee model but rather on extending labour rights, social security, and dignity to all employees regardless of whether they are employed or not. It acknowledges that informality is not only an economic situation but a structural problem that is based on inequality, and that states need to be proactive and redistributive. However, the strategy of India has frequently been diffused, where laws have dealt with particular groups of workers without providing universal and enforceable rights.

South Africa provides a more liberal constitutional framework that is based on substantive equality. Its Constitution specifically secures socio-economic rights such as the right to dignity, equality and fair labour practices that have been strongly construed by the courts to encompass vulnerable and informal workers. The Constitutional Court has continuously underlined the transformative quality of the Constitution, necessitating the state to deal with historical injustices and structural inequalities. This has facilitated the expansion of labour protection and social security to those workers who have traditionally not been covered by formal employment systems. The substantive focus of equality makes sure that legal provisions are more than mere proclamations, but that they are set to meet the needs of actual inequalities in the world, such as the racial, sex, and economic disparities.

Brazil also offers a good example by its constitutional and statutory acknowledgement of labour rights as fundamental rights. The Brazilian Constitution protects a broad spectrum of labour rights, such as minimum wages, social security and safe working conditions, and has increasingly applied these to informal and domestic workers. Law changes and judicial activism have been significant in assisting informal workers to become part of the larger labour protection framework. An example is the inclusion of domestic workers who were historically left out of the rights that other formal sector workers enjoyed, and it was a sign of inclusivity and equality. The case of Brazil shows that political will and institutional mechanisms are crucial in interpreting the guarantees in the constitution into concrete results for marginalised workers.

The comparative analysis highlights that to protect informal workers effectively, a move is needed towards the concept of substantive justice rather than formal equality that is underpinned

by enforceable rights, broadening the scope of the law and developing robust institutional structures. India can learn significant lessons by making a more integrated and rights-based approach that can be made in accordance with the international standards and comparative practices. These involve acknowledging informal workers as individuals who have rights, making social security universal and strengthening institutions to implement labour protections. Also, judicial interpretation in India can shift to a more transformative model, like in South Africa, to overcome the disjuncture between constitutional commitments and realities. In conclusion, comparative experiences point to the fact that dealing with the vulnerabilities of informal women workers requires more than a legal reform, but a kind of a wider commitment to social justice and equality.

X. Reforms and Recommendations Towards Substantive Justice

To implement substantive justice for women in the informal economy in India, a paradigm shift must be taken against the piecemeal welfare strategies to a rights-based and inclusive legal framework that reflects the realities of women in informal labour. The growth of the definition of a workplace to encompass homes, streets, farms, and online space, where a large percentage of women spend their time, is one of the most urgent reforms that must be implemented. The established notion of a workplace based on formal employment models leaves out the domestic workers, home-based workers and gig workers, leaving them without protection by some of the most important laws, such as those that cover sexual harassment and work safety. A more general and context-specific definition would guarantee that the legal protection is available to all areas where economic activity takes place.

It is also significant that a universal social security system that does not depend on formal employment status is created. The informal women workers are usually outside the scope of the available welfare programs, as they are not documented and are not recognised at work. The holistic system, founded on citizenship or residency, but not the employment category, would be used to access healthcare, maternity benefits, pensions and insurance. This system should be well-financed and effectively executed using decentralised systems to guarantee the last-mile delivery.

Another important measure towards substantive justice is to strengthen local complaint and redressal mechanisms. Access to formal judicial institutions by many women in the informal

sector is hindered by distance, cost, illiteracy and social stigma. By instituting community-based grievance mechanisms with an accessible nature that is gender sensitive, it is possible to enable women to report cases of exploitation, harassment, and wage conflicts without any fear of reprisals. Legal aid services must support these bodies and be monitored to hold them accountable and to make them fair.

It is also necessary to acknowledge the contribution of domestic and care work as a valid economic contribution. The unpaid labour of women, both at home and in the communities, is still unnoticed by the legal and policy discourse, although this is at the centre of keeping the economy running. Such work, which is not recognised by policy such as compensation systems or social security credits, would not only legitimise the work of women but would also serve as a means of breaking down gender norms that undermine care work.

Moreover, labour codes should also be restructured to include gender sensitive provisions that focus on the vulnerabilities of informal women workers. This involves providing equal pay, safe working conditions, maternity and protection against discrimination. The intersectional issues of women by caste, classes and migration status should also be addressed by legal reforms, thus facilitating a more inclusive labour regulation.

Judicial activism is the factor that may be transformative in closing the gap between the constitutional ideals and the ground realities. Courts can be used to give meaning to the law that is in existence to give protection to informal workers, particularly in matters of right to livelihood, dignity and equality. Courts can establish precedents by making progressive judicial pronouncements which require legislative and executive action, thus promoting substantive justice.

Legal awareness programs on a community level are essential in enabling women to assert their rights. Most informal workers are not aware of the legal safeguards that they have access to, and this continues to perpetuate exploitation. Localised grassroots campaigns with local language and community-specific campaigns can help to increase legal literacy and activate groups. Civil society organisations, local governments and women groups can establish sustainable awareness and advocacy platforms through collaborations.

XI. Critical Analysis

The Indian judiciary has been a major contributor in its efforts to fill the gap between formal equality and substantive equality, especially regarding women in the informal economy. Courts have now gone beyond a limited definition of equality as non-discrimination to adopt a more complex approach since structural disadvantages and lived realities are taken into account, through broad interpretations of fundamental rights. Courts have realised the interdependence of rights like livelihood, dignity and safe working conditions, and therefore implicitly understand the necessity of substantive justice. Nevertheless, as much as these interventions have helped in the development of constitutional jurisprudence, their effects have been lopsided, and on most occasions, they have not been practical. There is indeed a very solid normative basis that the judiciary has established, yet it has not been entirely effective in altering the material conditions of informal women workers. Among the inherent weaknesses is the disparity between the interpretation and the practical application of the constitution. Even the most progressive judicial pronouncements often lack the institutional means to be enforced, especially in the fragmented and uncontrolled informal sector. The lack of a detailed employer-employee relationship and poor administrative capacity and monitoring cannot easily translate rights into practical benefits. Consequently, numerous groundbreaking decisions have stayed aspirational as opposed to transformative. Moreover, socio-economic barriers to access to justice, including poverty, illiteracy and legal illiteracy, still impact women in informal employment disproportionately. This detachment points to the very limitation of judicial activism as a means of attaining substantive equality.

Structural transformation that is not solely limited to legal guarantees is also required for substantive justice. Although the provisions and judicial interpretations of the constitution offer a necessary framework, they alone are unable to eradicate the deep-rooted caste, gender and class-based socio-economic hierarchies. Many informal women workers work in a realm of exploitation that is supported by cultural values and economic dependence, and needs thorough policy interventions and institutional changes. This involves the strengthening of social security frameworks, institutionalisation of informal labour and the creation of inclusive labour policies to ensure that the particular vulnerabilities of women are met. The hope of substantive equality will otherwise be just symbolic without these systemic changes.

In terms of feminist jurisprudence, the practice in India is a sign of progress and gaps. The feminist legal theory puts a lot of emphasis on the need to acknowledge the intersectionality and

the differing effects of laws on the marginalised groups. In some cases, these insights have been taken into consideration by the courts in India by recognising the special problems that women encounter, especially in matters that concern the right to work and livelihood. Nonetheless, the wider legal paradigm continues to be based on a formalist paradigm that fails to fully reflect the intricacies of women in the informal economy. It is necessary to have a more systematic and proactive incorporation of feminist values into the judicial and legislative processes.

XII. Conclusion

The above discussion shows that the Indian constitutional structure, on the one hand, officially ensures equality, dignity and livelihood to all citizens, but on the other hand, its actual implementation to women in the informal economy has been severely wanting. According to the study, a very high percentage of workers who are women have remained to work under precarious and unregulated conditions characterised by low wages, lack of social security, low working conditions and lack of access to legal redress. Articles 14, 15, 19 and 21 give a robust normative foundation, but their application has been mainly limited to formal sectors or has been applied inconsistently to informal situations. Judicial interventions have at other times further widened these rights to include livelihood, dignity and protection against exploitation as part of the right to life, but this has not been translated to consistent and effective protection on the ground. There is also a failure by legislative actions, such as social security and labour codes, which are inconsistent in coverage, ineffective in enforcement, and continue to fail to consider the realities of informal employment forms.

An important point that has come out of this research is that the principle of formal equality, which underlines the same treatment before the law, is necessarily lacking in the divisive and stratified disadvantages of women in the informal sector. These women frequently find themselves in overlapping marginalisation in terms of gender, caste, class and migration status that are not solvable in a neutral or one-fits-all legal solution. In this context, formal equality can be seen as a threat to maintaining the status quo by disregarding structural obstacles and socio-economic limitations. As such, it becomes important to shift towards substantive justice where the objective is not just based on equal legal recognition but equitable results that consider the various vulnerabilities. Substantive justice is closer to the transformative vision of the

Constitution, especially in the light of the Directive Principles of State Policy, which demand social and economic democracy and political equality.

The research also highlights that to ensure that women in the informal economy can enjoy substantive justice, this has to be a holistic and integrated approach that transcends the interpretation of the constitution. The reform of the law should ensure that the coverage of labour protection is extended to all types of informal labour, the obligations of the employer are well spelt out, and that social security benefits are accessible to everyone. Meanwhile, the enforcement mechanisms should be reinforced with the help of the localised grievance redressal mechanisms, enhanced accountability, and enhanced coordination among the state agencies. Social reforms are also important, especially when it comes to dealing with the highly entrenched gender norms, increasing access to education and legal literacy and acknowledging unpaid and care work as a vital part of the economy. Policy interventions must be developed in a gender and intersectional approach, such that the special issues that the underprivileged groups of women have to deal with are properly tackled.

Conclusively, the constitutional pledge regarding the equality of women in the informal economy of India is yet to be completely applied. To close the divide between legal ideals and lived realities requires a radical shift between formal equality and substantive justice, which is underpinned by consistent legal structures, receptive institutions, and inclusive policy interventions. Only in this way can the Constitution become a tool of empowerment and social change for millions of women workers who remain peripheral to the legal and economic systems.