



GENDER EQUALITY: PROGRESS TOWARDS SDGs IN INDIA

Laws on workplace equality

By

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towards alternatives in health and development

Introduction

Background

This fact sheet is one of the five fact sheets about India's position on some important Gender Equality indicators for Sustainable Development Goals (SDGs), the progress it will make till 2030 and the time required to reach the target.

Gender Equality is a cross cutting issue across the 17 Sustainable Development Goals (SDGs). It can be a catalytic policy intervention, compounding and accelerating progress across the development spectrum¹. Equal Measures 2030 (EM2030)² developed two versions of a comprehensive Index on gender equality and SDGs, the SDG Gender Index, since 2017.

About the SDG Gender Index 2019

The SDG Gender Index is a comprehensive Index on gender equality aligned explicitly to the SDGs. This index compares SDGs related progress across 129 countries (that account for 95 per cent of the world's girls and women) including India. The 2019 Index built on learning from a pilot version of the Index launched in 2018 for six countries, including India. As gender equality is linked to the entire development agenda, this index hopes to impact broader developmental gains. It presents the big picture of gender equality in the SDGs agenda and captures a range of issues relevant across all countries and contexts. The SDG Gender Index gives a snapshot of where the world stands based on availability of recent data and linked to the vision of gender equality. The Index shows that across the 129 countries studied, no country has fully achieved the promise of gender equality envisioned in the ambitious 2030 Agenda. Nearly half of the world's girls and women – 1.4 billion – live in countries that get a “failing grade” on gender equality, where the gender gaps are particularly acute.

About the '*Bending the Curve towards Gender Equality by 2030*' report

Based on the latest SDG Gender Index 2019, EM2030 selected five key issues to analyse the rates of progress towards the targets and launched its research on '*Bending the Curve towards Gender Equality by 2030*' in March 2020. This report considers past rates of progress for the countries on each issue to project the time required to reach the target for each indicator at the same rate, and calculates how fast countries need to progress to achieve the target by 2030.

About the India Fact Sheet

In this fact sheet SAHAJ has contextualized the India related data from '*Bending the Curve towards Gender Equality by 2030*' report within the policy and legal environment in the country; and tried to provide realistic recommendations for achieving the perfect scores for gender equality for the selected indicators. We also discuss the possible effects of COVID-19 pandemic on the progress towards SDGs, keeping in view the guiding principle of SDGs agenda, 'Leave no one behind'.

¹ <https://data.em2030.org/wp-content/uploads/2020/03/EM2030BendingTheCurveReportMarch2020-1.pdf>

² EM2030 is a cross-sector partnership of leading organizations from civil society and the development and private sectors, with a Secretariat hosted by Plan International. EM2030 is facilitating the access to easy-to-use data and evidence to guide efforts in countries from different parts of the world and is trying to increase political will and dialogue amongst key stakeholders, particularly the government, on the importance of data and evidence-based implementation of the SDGs for girls and women in these countries. (Can be accessed at: <http://www.equalmeasures2030.org/>)

Indicator- Laws on Workplace Equality

INTRODUCTION

In the world of work, several challenges remain to the achievement of gender equality. Significant gender gaps exist – and there has been little change over the past 20 years – with respect to both the quantity and quality of jobs: access to employment, pay, social security and occupational segregation (ILO). Women are more likely to be unemployed than men, with unemployment particularly affecting young women. Women also continue to be overrepresented in unpaid and care work, often working longer hours than men when both paid work and unpaid work are taken into account. Advancing gender equality will require addressing these gaps, including the unpaid and undervalued work undertaken by women, redistributing care responsibilities, and ensuring equal remuneration for work of equal value.

This indicator chosen by EM2030 in the *Bending the Curve Report* is related to *SDG 8 – Promote sustained, inclusive, and sustainable economic growth, full and productive employment and decent work for all*. The key themes addressed by this SDG are: Employment, Economic inclusion, Non-discrimination, Capacity Building, Availability of a skilled workforce and Elimination of forced or compulsory labour. EM2030's analysis on Laws for Workplace Equality will contribute to Target 8.5 *By 2030, achieve full and productive employment and decent work for all women and men, including for young people and persons with disabilities, and equal pay for work of equal value*.

Other links of this indicator with SDG targets and indicators are given in the table below.

SDG Indicator 5.1.1 - on whether or not legal frameworks are in place to promote, enforce and monitor equality and non-discrimination on the basis of sex. Including, for example, on whether there is a law that makes it obligatory for employers to equally remunerate male and female employees who do work of equal value.

A related Target is 5.4 - Recognize and value unpaid care and domestic work through the provision of public services, infrastructure and social protection policies and the promotion of shared responsibility within the household and the family as nationally appropriate.

SDG Target 10.3 - Ensure equal opportunity and reduce inequalities of outcome, including through eliminating discriminatory laws, policies and practices and promoting appropriate legislation, policies and actions in this regard.

This is not an official SDG indicator but compliments the indicators from the Global Indicator Framework. It captures the extent to which the countries have laws mandating gender equality in the workplace. It comprises of seven laws (including anti-discrimination, equal pay, paid leave, treatment of pregnant workers, and laws that put restrictions on the types of jobs women can do) assessed by the World Bank's Women, Business and the Law (WBL) research³.

3 <https://datacatalog.worldbank.org/dataset/women-business-and-law>

EM2030 has used seven indicators to score the legal frameworks for gender equality. These are:

1. Does the law prohibit discrimination in employment based on gender?
2. Does the law mandate equal remuneration for work of equal value?
3. Can women work the same night hours as men?
4. Can women work in jobs deemed dangerous in the same way as men?
5. Are women able to work in the same industries as men?
6. Is paid maternity leave of at least 14 weeks available to women?
7. Is dismissal of pregnant workers prohibited?

For this indicator, the Index has used 2009 as the base year and 2020 as the year to assess changes. Based on the rate of change, EM2030 goes on to project how many years it would take to reach the desired score of 100 and what would be the score in 2030 when the SDGs are supposed to be achieved.

However, for countries like India, where most of the female labour force (over 90 per cent) is in the informal, unorganised sector, this indicator based on laws for workplace equality does not capture the reality of majority of the women's lives. This is explained in details later in this document.

FINDINGS FROM 'BENDING THE CURVE' REPORT

India

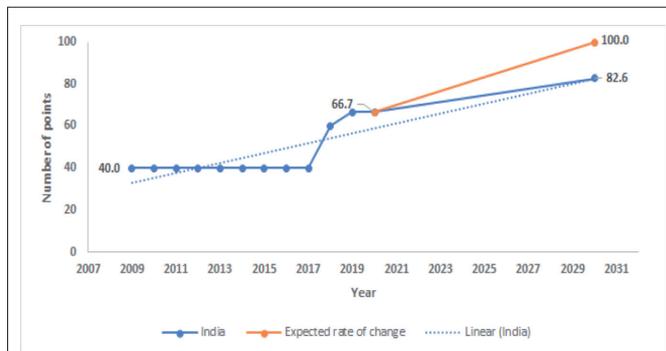
Table 1 shows how India is faring on the seven indicators. And Figure 1 shows how the situation will change until 2030 and by when India will be able to achieve its score of 100.

Table 1: India's situation on the seven indicators in 2009 and 2020⁴

Indicator	India 2009	India 2020
1. Prohibit discrimination?	YES	YES
2. Mandate equal remuneration?	NO	NO
3. Same night hours as men?	NO	NO
4. Jobs deemed dangerous?	NO	YES
5. Same industries as men?	NO	NO
6. Paid leave of at least 14 weeks?	NO	YES
7. Prohibits dismissal of pregnant women?	YES	YES
SCORE	40	66.7

- India's scores have improved by 26.7 points between 2009 and 2020.
- At this rate, by 2030 the projected score will be 82.6 points, short of the desired 100.
- India will be able to achieve its SDG target of 100 only by 2037.

Figure 1: India's rate of change on the 7 laws related to workplace equality



Source: Women, Business and the Law, EM2030 calculations

Asia and the Pacific region

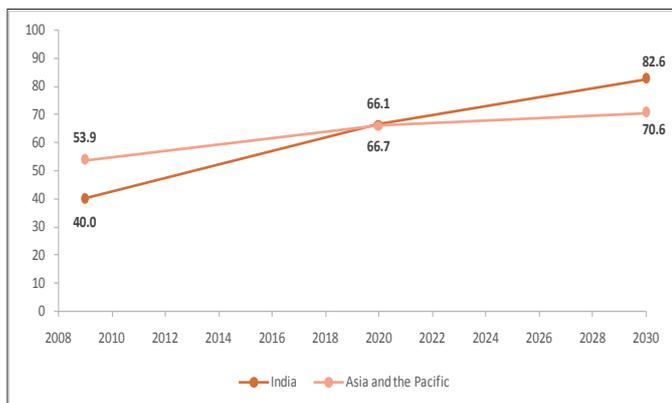
Table 2 shows that India's scores have improved by 26.7 points between 2009 and 2020. At this rate, the improvement over the next 10 years will be of 15.9 points and the projected score by 2030 will be 82.6 points, short of the desired 100. It is only by 2037 that India will be able to achieve its SDG target of 100. This is much better than the Asia Pacific Region and the global estimate of 2108

Table 2 : India in comparison with Regional and Global Average

	India		Regional – Asia Pacific		Global	
	2009	2020	2009	2020	2009	2020
Score on 7 indicators	40	66.7	53.9	66.1	64.5	74.3
Score in 2030 (projected)	82.6		70.6		77.7	
Projected change between 2020 and 2030	15.9		4.5		3.4	
Target of 100 expected to be met in	2037		2108		2108	

⁴ The Equal Remuneration Act 1976 (ERA) does not comply with the principle set out in Convention n. 100. Section 4 of the ERA limits the scope of comparison to determine work of equal value, establishing that it is the duty of the employer to pay equal remuneration to men and women workers for the *same work or work of a similar nature*. The ILO's supervisory body understands that the ERA's provisions are more restrictive than the principle of equal remuneration for men and women for work of equal value, because it should be possible to compare work of an entirely different nature to determine whether the work is of equal value. Since the legislation in India does not conform and does not give full legislative expression to the equal remuneration principle set out by Convention n. 100, India does not score a point for the Equal Remuneration question in the WBL index.

Figure 2: India in comparison with Regional Average



Source: Women, Business and the Law, EM2030 calculations

We tried to compare India with other South Asian countries. Table 3 examines the countries in the neighbourhood for which data are available, namely, China, Bangladesh and Bhutan. The table shows that all the countries scores have remained stagnant over the period 2009-2020, with China having better workplace laws for women than Bangladesh. We can also see that India is the same position as China in 2020 having improved its scores over the last 11 years, and in a much better position than Bangladesh. Bhutan is a very small country and its scores are the highest amongst the four countries.

Table 3: India in comparison with neighboring countries for which data are available⁵.

Indicator	India 2009	India 2020	China 2009	China 2020	Bangladesh 2009	Bangladesh 2020	Bhutan 2009	Bhutan 2020
1. Prohibit discrimination?	YES	YES	YES	YES	NO	NO	YES	YES
2. Mandate equal remuneration?	NO	NO	NO	NO	NO	NO	YES	YES
3. Same night hours as men?	NO	NO	YES	YES	YES	YES	YES	YES
4. Jobs deemed dangerous?	NO	YES	NO	NO	NO	NO	YES	YES
5. Same industries as men?	NO	NO	NO	NO	YES	YES	YES	YES
6. Paid leave of at least 14 weeks?	NO	YES	YES	YES	YES	YES	NO	NO
7. Prohibits dismissal of pregnant women?	YES	YES	YES	YES	NO	NO	YES	YES
SCORE	40	66.7	66.7	66.7	26.7	26.7	80	80

Two countries across the Asia and the Pacific region – Australia and Philippines already have a score of 100 on Workplace Laws in 2020. Vietnam, Kazakhstan and Lao PDR are almost there – They will achieve the score of 100 by 2023 (Vietnam) and 2026 (Kazakhstan and Lao PDR). While India will take 17 years to reach its SDG score of 100, Sri Lanka will take 88 years (highest in the region), Thailand 53, Myanmar 25 and Vietnam only 3 years.

Global level

The best performing countries in the world include Netherlands, Peru, South Africa and Norway. These countries have already achieved a score of 100 on workplace laws in 2020. Only 36 countries across the world have met the target for laws protecting women against discrimination in the workplace.

In subsequent sections we discuss the specifics of the context in India and our recommendations.

⁵ We tried to do a comparison with other South Asian countries – Afghanistan, Maldives, Nepal, Pakistan, Sri Lanka – but the data is not available.

THE SITUATION IN INDIA

The National Indicator Framework prepared by the MoSPI, Government of India includes following indicators related to work.

5.1.4 Whether or not legal framework are in place to promote, enforce and monitor equality and non-discrimination on the basis of sex, (in percentage). The Ministry of Women and Child Development has to report on this annually.

8.3.1 Percentage of workers in informal sector among total workers engaged in non-agricultural sector, 2017- 18. The Ministry of Statistics and Programme Implementation has to report on this annually.

8.5.2 Workforce Participation Ratio (WPR), 2017-18 (in percentage). The Ministry of Statistics and Programme Implementation has to report on this annually.

8.5.3 Wages earned by male-female in regular / casual employment (per month in rupees). The Ministry of Statistics and Programme Implementation has to report on this quarterly.

Female labour force participation rates in India declined from 34.1 per cent in 1999-00 to 27.2 per cent in 2011-12⁶ and further to 23 per cent in 2019⁷. For comparison, the world average in 2019 based on 181 countries is 51.81 percent. The SDG Index of NITI Aayog puts the FLFP rate at 17.5 per cent for 2019-20⁸. Among the Indian states, Himachal Pradesh has the highest FLPR – 39.70 per cent and Bihar the lowest – 2.80.

NITI Aayog's SDG Index Report (2019-20) Goal 8 on Decent Work (Page 108)

One of the key challenges in India has been the declining participation of female workers in the labour force. India's female Labour Force Participation Rate (15 years+) of 23.3 per cent is much lower than that of men, which stands at 75.8 per cent. Government has taken critical steps for creating an enabling environment for women to participate in the economy. This includes the enactment of the Maternity Benefit (Amendment) Act, 2017 which enhanced the paid maternity leave from 12 weeks to 26 weeks and provisions for mandatory crèche facility in the establishments having 50 or more employees. Further, to enhance the employability of female workers, the government is providing training to them through a network of Women Industrial Training institutes, National Vocational Training Institutes and Regional Vocational Training Institutes.

A recent ORF study⁹ states that four primary factors that help explain India's low—and in fact declining—FLFP rate : '1) the pervasiveness of entrenched patriarchal social norms that hinder women's agency, mobility and freedom to work; 2) rising household incomes that create a disincentive for labour market participation among women mainly informed by the same norms in (1); 3) the disproportionate burden of unpaid work and unpaid care work on women; and 4) the lack of quality jobs for women reinforced by gendered occupational segregation and a significant gender wage gap.'

While discussing any work related data in India, we should remember that more than 90 per cent of the employment in the agricultural sector and around 70 per cent in the non-agricultural sector in the country falls under the informal category, according to ILO India Labour Market Update (2016) and NSSO data (2011-12). NSSO estimates that 84.7 per cent of jobs in the Indian economy are in the informal or unorganised sector. Many workers in informal employment are not even considered workers: under the law, by policy makers, by trade unions, by other workers, or even by themselves. Workers in informal employment have a variety of employment statuses. Also, individual workers may be engaged in multiple activities and employment statuses within a single day, month, or year. Additionally, most workers in informal employment do not work in a standard workplace, but work primarily in public spaces (streets, markets, etc.), in private homes or on private farms (WIEGO)¹⁰.

In 2017–2018, 59.3 per cent of rural women and 51 per cent of urban women were in informal employment. During that same period, 6.8 per cent of rural women and 11.4 per cent of urban women were in regular salaried employment¹¹. Caste and class background play a big role in the kind of work women can access. Women from poor, rural families likely engage in agricultural work that is not recognized as work and remain unpaid. Caste based occupations segregate women in the informal sector¹². Some examples of labour of women of lower castes are the traditional midwife or *dai*, the female manual scavenger, the agricultural worker and the leather worker. Stigma of caste is compounded by stigma of sexuality as in the case of dancing bar girls, or sex workers¹³. These are women within the class of women in the informal sector, who become doubly vulnerable - falling prey to the insecure working conditions that affect all the informal sector, and, have the added burden of stigma attached to the work that they do.

6 Chaudhary, R., & Verick, S. (2014). *Female labour force participation in India and beyond*. New Delhi: ILO.

7 <https://data.worldbank.org/indicator/sl.tlf.cact.fe.zs>

8 SDG India Index and Dashboard 2019-20, NITI Aayog, 2019

9 Chapman, T., & Mishra, V. (2019). *Rewriting the Rules: Women and Work in India* (No. 80). ORF Special Report.

10 Unheard, Unseen, Unrecognized: Women in informal employment. WIEGO.

11 National Statistics Office, Ministry of Statistics and Programme Implementation, *Periodic Labour Force Survey 2017-2018*, New Delhi, May 2019

12 Gopal, Meena. Caste, Sexuality and Labour: the Troubled Connection. *Current Sociology* · March 2012

13 Gopal, Meena. Ruptures in Caste/Gender/Labour. *Economic and political weekly* · April 2013

Women do arduous work as wage earners, piece rate workers, casual labour and paid family labour. The coverage of labour laws has not benefited these women workers in many areas of wages, working conditions, maternity benefits and social security. Studies reveal that the women workers in the unorganized sector face not only dual work burden but also problems of gender discrimination, wage discrimination, tough working conditions, lack of training, education and skill, low wages, job insecurity health problems and so on, at their workplace.^{14,15} For example, there are estimated to be around 4.2 million domestic workers in the country, and their contribution is rarely computed within the economy.¹⁶ They work without a formal contract and legislative protection, with little to no bargaining power or job security, no paid holidays or maternity leave and are vulnerable to sexual harassment.

In this context, the EM2030 Indicator based on seven 'workplace equality laws' does not really address the situation on India's vast female 'worker' population.

Policy and Programmes

Although India has the Equal Remuneration Act 1976 which mandates equal pay for the same or similar work, India has a gender wage gap of 34 per cent (ORF 2019). NITI Aayog's SDG Index (2019-20) states that average wage earnings of females are 78 per cent of males, among salaried employees in rural and urban India. In UP and Haryana average wage/salary earnings of women is higher than males – the ratios are 1.25 and 1.03 respectively. The states with largest gaps are Jharkhand (0.50), Daman and Diu (0.56), West Bengal (0.56) and Telangana (0.59).

The ORF report states that this pay gap increases with age, work experience, and rise in occupational hierarchy and works as a disincentive for women to continue. Women's participation in industries with the highest average wages (including information and communications and financial services) stands at a low 15 per cent, and that eight times more men work in high-skilled jobs than women, thus belying structural causes that end up leading to discrimination against women.

The Mahatma Gandhi National Rural Employment Guarantee Act (2005) aims at enhancing the livelihood security of people in rural areas by guaranteeing hundred days of wage-employment in a financial year to a rural household whose adult members volunteer to do unskilled manual work¹⁷. There is a statutory requirement of 1/3rd women participation under the scheme. However, the participation rate has consistently been above this requirement (55 per cent in FY 2015-16, 56 per cent in FY 2016-17 and 53 per cent in FY 2017-18 and 2018-19) indicating that women want paid work¹⁸.

The Unorganised Workers' Social Security Act was enacted in 2008. It defined "unorganised sector" as any enterprise owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind, and with less than ten workers. "unorganised worker" is defined as any home-based, self-employed or a wage worker in the unorganised sector and includes any worker in the organised sector not covered by certain legislations mentioned in this Act. The Act also set up the National Social Security Board for unorganised workers and included their representation as members of the Board. It defined suitable welfare schemes for unorganised sector workers by the Central Government related to (a) life and disability cover; (b) health and maternity benefits; (c) old age protection; and (d) any other benefit as determined by the Central Government and also State Government welfare schemes for unorganised workers, related to (a) provident fund; (b) employment injury benefit; (c) housing; (d) educational schemes for children; (e) skill upgradation of workers; (f) funeral assistance; and (g) old age homes, and others. Despite this Act, studies cited above indicate that the benefits that unorganised workers should get, do not reach them.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 is a positive step towards addressing harassment at work. Once again, the definition of 'work' and 'workplace' is not very clear for the majority who are women in the informal sector. An Oxfam India poll¹⁹ showed that among women who are most prone to sexual harassment in their workplaces, 29 per cent are laborers, 23 per cent are domestic workers and 16 per cent work in small scale industries. The reasons for not taking any action against the harassment were: fear of losing their job, fear of getting stigmatised, absence of any complaints' mechanism at their workplace and lack of awareness of the redressal mechanisms. This, once again shows that there are problems in effective implementation of this law.

India's Amended Maternity Benefit Act 2017 stipulates that employers must provide women with 26 weeks of paid time off. While this appears to be good on face value, in the absence of a corresponding paternity leave, this amendment actually perpetuates the notion of women as the primary caregivers. The law also covers only formal and large sized firms which employ only a small proportion of India's female workers, excluding the 94 per cent women in the informal sector. SDG Index Report 2019-20 reinforces the gaps in implementation of the law – stating that according to NFHS 4 only 36.4 per cent of those eligible (that is, in the formal sector) received the maternity benefit.

14 Zothan Mawii. Feminist Perspectives on the Future of Work in India September 2019. FES. New Delhi

15 Manju. Women in unorganized sector - Problems & issues in India. International Journal of Applied Research 2017; 3(4): 829-832

16 Women in Informal Employment: Globalizing and Organizing, "Domestic Workers in India."

17 <http://www.nrega.ap.gov.in/Nregs/>

18 <https://pib.gov.in/newsite/PrintRelease.aspx?relid=186368> 13-December-2018 17:47 IST Accessed on: 2 April- 2020 12:05 IST

19 <https://economictimes.indiatimes.com/news/politics-and-nation/why-women-contract-workers-are-among-the-most-vulnerable-to-sexual-harassment-at-work/articleshow/61313168.cms>

COVID-19 PANDEMIC AND IMPACT ON WOMEN'S WORKPLACE EQUALITY

The COVID-19 pandemic has resulted in devastating effects on women's work and economic empowerment. In the lockdown period when the economy – and life - is at complete standstill, women in the informal sector are without any daily wage earnings. COVID-19 has had profound impact on women in the informal economy. Several reports are pointing to severe distress among women in the informal economy²⁰. A study by ISST²¹ shows that around 83 per cent of women workers covered in the study were facing a severe income drop. Construction workers were the worst hit - all of them reported a loss of paid work. And 97 per cent of the street vendors said that they had access to no source of income during the lockdown period. Around 54 per cent of the street vendors had taken emergency loans from local moneylenders at very high-interest rates and 37 per cent reported difficulties to repay the loans.

It is likely that affected by the economic crisis, employers in the formal or informal sector will lay off women because of the cultural norms that devalue women's work, and because they are not considered primary breadwinners of the family and hence more easily dispensable. Women employees in the formal sector may also be viewed as being costly, because of the Maternity Benefits Act that entitles women to six months paid leave. Distress induced employment for women is hardly likely to improve the situation. They may be forced to accept lower wages, work longer hours or face layoffs as there would be a desperate pool of labour that may be willing to work at very low wages.

POLICY RECOMMENDATIONS

From the perspective of the SDGs' concern for 'leave no one behind', India needs to prioritise action for the 94 per cent women in the informal sector. There should be effective implementation of the 2008 Unorganised Workers' Social Security Act. Social security and protections – health care, pensions, insurance - must be delinked from formal employment and linked with the individual. Portability is essential in an independent and informal workforce. In the post COVID-19 period, the informal sector requires targeted economic policies, government bailouts and other support measures.

All workspaces must be safe, gender-inclusive and non-discriminatory. Individuals must be ensured protection at their place of work (streets, agricultural fields, homes that employ them and so on) rather than place of employment. Increased budgetary allocations are required to create awareness of women about the POSH Act. Barriers to effectively implement the Act must be addressed urgently.

Incentives – social, political, and economic – must be created to allow for the redistribution of unpaid work and care work, so that women can have the opportunity to join the labour force, and move out of the informal to the formal sector. This also implies that increased investments be made to enhance women's skills and capacities.

Policies and incentives must catalyse women's equal participation across all jobs and sectors traditionally seen as male bastions. The government, private sector, communities, and families must rethink the design and delivery of skills and education programmes that will allow women's participation and rise across existing and emerging industries and occupations.

There is a need for a comprehensive labour policy to help bring more women to the workplace. For example, creches should be operated all over the country for the children of working women while they are on their jobs .

For 'Equal compensation for equal work' performance of organisations on their gender responsiveness must be subject to audits and public scrutiny.

20 For example, see SEWA: IMPACT OF CORONAVIRUS ON THE INFORMAL ECONOMY. <https://www.wiego.org/sites/default/files/resources/file/SEWA-Delhi-Covid-19-Impact.pdf>

21 Impact of COVID 19 National Lockdown on Women Construction Workers and Street Vendors in Delhi. ISST. New Delhi. May 2020



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About SAHAJ

SAHAJ (Society for Health Alternatives), registered in 1984, envisions a society with social justice, peace and equal opportunities for all. We focus on children, adolescents, and women in two specific sectors- health and education. We strive to make a practical difference in the lives of marginalized women and girls through direct action in the communities and through action research and policy dialogues. SAHAJ believes in developing programs based on the expressed needs of the communities and being led by the communities. For greater impact at the state and national level, we collaborate with like-minded organizations to form coalitions.

SAHAJ is EM 2030's national partner for India since 2017 for 'Evidence based Civil Society Action for Gender Equality and SDGs' with focused work in selected states and some activities at the national level towards achieving the selected targets from SDG 3 and SDG 5.

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