

Gender Justice and Social Security in International Law: From Formal Equality to Gender-Responsive Social Protection

Dr. Gousia Feroz Bhat*

Lecturer, Kashmir Law College, Jammu & Kashmir.

*Corresponding Author: gousia.llm@gmail.com

Citation: Bhat, G. (2026). *Gender Justice and Social Security in International Law: From Formal Equality to Gender-Responsive Social Protection*. *Journal of Modern Management & Entrepreneurship*, 16(03), 258–265. <https://doi.org/10.62823/JMME/16.03.9533>

ABSTRACT

The topics of gender justice and social security are usually analyzed separately from each other in terms of international law. Nevertheless, such an approach ignores the tight connection that exists between these two concepts. The capability of individuals to cope with the challenges such as unemployment, sickness, disability, motherhood, old age and loss of a family breadwinner, among others, is significantly dependent on gender-related trends in the sphere of employment, informal care work and distribution of income, as well as access to social security. In particular, women were always engaged in informal, insecure and poorly paid jobs and took the major share of household and caring duties at the same time. As a result, a gender-neutral system of social security could perpetuate but not solve inequalities of this kind. This researcher will analyze the evolution of international standards regarding the issues of gender justice and social security. It will be determined if the modern international legal system can address the needs of women and other disadvantaged groups. The researcher further analyzes how the international legal regime has increasingly shifted from its narrow interpretation of social security mainly through the lens of employment and contributions to a human rights-oriented one based on universality, dignity, equality, social solidarity and life cycle coverage. However, there are still notable disparities between international standards and their realization. Gender-blind eligibility conditions, employment-linked contribution schemes, insufficient maternal protection, low valuation of unpaid care, exclusion of informal sector workers and lack of intersectional approach limit the real possibility of accessing social security. The article puts forward the idea of a gender sensitive approach to social security, which would be based on substantive equality, universal social protection floors, unpaid care recognition, adequate maternity and parental benefits, equal pensions, inclusion of informal and precarious workers, disability-sensitive approaches, accessibility of complaints procedures, gender sensitive budgeting and participation of affected communities. The conclusion made is that social security is not merely a financial insurance but an important tool of ensuring substantive gender justice, human dignity and social citizenship.

Keywords: Gender Justice, Social Security, Social Protection, Gender Equality, International Labour Organization, CEDAW, Social Protection Floors, Substantive Equality, Human Rights, Social Justice.

Introduction

Social security in essence entails the response of society in situations whereby members of society cannot secure sufficient income or social protection services on account of social and economic risks. Illness, unemployment, childbirth, disability, and ageing affect everyone but differently.

Gender plays a key role in accessing social security. For instance, women are likely to be victims of discontinuous work experiences, reduced income, caregiving without remuneration, and informal work. This may hinder access to contributory pensions, unemployment social insurance benefits, among others employment-related services. This is especially true in cases where social security systems are premised on continuous formal employment.

Human rights standards have increasingly come to recognise that substantive equality goes beyond mere formal equality. States must consider whether existing legal and institutional frameworks really allow for disadvantaged groups to enjoy their rights.

The core of this paper is that gender-sensitive social security must be considered an essential element of gender justice. International standards have laid down principles but their implementation is contingent on recognition of the role of unpaid care work, informal employment, intersectional discrimination, and women's economic autonomy.

Objectives and Research Questions

The study aims to:

- study the international standards on gender justice and social security;
- research the connection between social protection and gender equality;
- explore the contribution of the CEDAW and ILO standards;
- determine the gender-related weaknesses of the traditional social security system; and present a gender-responsive approach to social protection.

The main research questions are:

- Which international standards apply to gender equality in social security?
- Does formal equality ensure substantive equality?
- How do the international labor standards meet the social security needs of women?
- What changes must be made to the social protection to make it gender-responsive?

Methodology

This paper utilises a doctrinal and analytical methodology. It explores international treaties, ILO Conventions and Recommendations, instruments of the United Nations, and other international policy documents. A gender-sensitive and intersectional method of analysis has been applied to find the gap between legal entitlement and access.

Social Security as a Human Right

Social security as a human right is well established under international human rights law.

Article 22 of the Universal Declaration of Human Rights (UDHR) affirms the right to social security as essential for the full development of personality and dignity. Article 25 also provides the right to protection against adverse conditions like unemployment, sickness, disablement, widowhood and old age.

Article 9 of the ICESCR explicitly identifies the right to social security, including social insurance, of everyone.

A rights-based perspective on social security is important since social security could no longer be seen as government charity. People are now rights-bearers, while States are duty-bearers to provide accessible and adequate social security systems.

The international system now relates social security to the following core principles:

dignity + equality + social protection.

CEDAW and Gender Equality

The Convention on the Elimination of all Forms of Discrimination Against Women constitutes the main international instrument for addressing discrimination against women.

The significance of CEDAW to social security derives from the more expansive definition of discrimination contained in the Convention. Discrimination on the basis of gender cannot be solved

simply by forbidding discrimination in law. The state must take measures to ensure that social and structural mechanisms that create discrimination are addressed.

This implies for social security that questions must not only be posed regarding what entitlements to social security women have in accordance with national laws but rather whether they can in practice enjoy their rights.

ILO Standards on Social Security

The International Labour Organization has developed one of the most comprehensive international frameworks for social security.

• ILO Convention No. 102

The **Social Security (Minimum Standards) Convention, 1952 (No. 102)** identifies nine branches of social security:

- medical care;
- sickness;
- unemployment;
- old age;
- employment injury;
- family benefits;
- maternity;
- invalidity; and
- survivors' benefits.

The reason why the convention is considered important is that it provides minimum international standards without constraining the States in how they formulate their domestic policies.

Each of these branches is of gender importance. Maternity benefits cover pregnant and post-pregnancy periods of women; pensions will be very useful to those women whose career has been interrupted; family benefits will help in caring; and disabled and survivors' benefits will decrease vulnerability.

Social Protection Floors and Gender Equality

One of the important developments in international social security law is the ILO Social Protection Floors Recommendation, 2012 (No. 202).

According to the Recommendation, the key aspects of social protection floors include the following:

- essential healthcare;
- basic income security for children;
- income security for those who cannot generate adequate incomes;
- maternity protection; and
- basic income security for the elderly.

The most important point here is that Recommendation No. 202 includes such principles of social protection as gender equality, non-discrimination, universality, social inclusion, adequacy, accessibility and dignity.

This is a move from the purely employment-focused approach to the life-cycle approach to social protection.

The latter is especially important for women because many women do not fall under the conventional employment-based insurance system.

Formal Equality versus Substantive Equality

The most difficult aspect of developing a gender-sensitive social security system is the distinction between formal and substantive equality.

Even when a policy or practice applies to both men and women, it may result in unequal outcomes.

For example, a pension scheme which depends only on continuous contributions seems to be a gender neutral policy at first glance. Women who take career breaks to look after their children or elders will end up with fewer contributions and hence smaller pensions than men.

So while the policy is formally equal, it is substantively unequal.

Hence, for gender justice, the social security systems have to address:

- different wages;
- employment breaks;
- unpaid work;
- informal work;
- maternal responsibilities;
- disabilities;
- age; and
- family obligations.

The global trend towards substantive equality arises from the realization that equality does not always lead to equality of outcome.

Unpaid Care Work and Social Security

Unpaid care work is one of the most important, but least recognized aspects of gender inequality.

Women undertake considerable unpaid:

- child-care;
- elder-care;
- housework;
- disability-care; and
- responsibilities relating to family life.

Even though this activity makes an important contribution to societal and economic well-being, it does not always lead to social security contributions.

This could result in a penalty on social security terms.

A woman who works for a number of years as an unpaid caregiver in looking after children could end up facing:

- lower earnings over a lifetime;
- less contribution towards her pension; and
- slowness in climbing the career ladder.

A gender-sensitive approach should recognize the period of caregiving when awarding social security benefits.

It should not treat unpaid care as being of the same value as paid work, but rather recognize its social worth and avoid an undue economic penalty on women undertaking it.

Informal Employment and Gender Inequality

The connection between informality of work and social protection is yet another key issue.

There are many women working in the sector of informal employment, comprising domestic work, agriculture, home based and casual employment.

Consequently, employment-based social insurance leaves a lot of women without enough protection.

Growing international standards emphasize the need for a wider social protection system which comprises:

social insurance, social assistance and universal protection floors.

It is crucial to make sure that social protection does not depend exclusively on one's capability to have an employment relation.

This is especially true for developing countries where the informal employment sector takes up a considerable portion of the labour market.

Maternity Protection

Maternity protection forms an integral part of gender justice.

In the absence of appropriate maternity protection measures, pregnancy can lead to:

- Loss of income;
- Employment insecurity;
- Discrimination;
- Health threats; and
- Withdrawal from employment.

Maternity protection is viewed as an essential aspect of social security and employment protection within international labour standards.

Yet, maternity protection must be structured as a social responsibility, rather than an employer or women's burden.

A good system covers both

reproductive rights and economic activity of women.

Old Age, Pension Inequality and Gender Justice

Pension inequalities demonstrate the way in which gender inequalities get compounded through the life cycle.

There may be a lower pension among women due to:

- lower lifetime earnings;
- part-time work;
- employment interruption;
- unpaid care work;
- informal work; and
- greater longevity.

Therefore, pension inequalities are not an old age issue alone; they are a cumulative effect of inequalities suffered during the working age years.

Gender-sensitive pension schemes must therefore include approaches like:

- care credit system;
- pension guarantee floor;
- universal old age pension scheme;
- non-contributory pensions; and
- stand-alone pension schemes.

The aim must be to ensure that women do not become poor at old age due to care work performed at an earlier age.

Intersectionality and Social Security

Gender cannot be viewed in isolation.

The woman who is disabled, the old woman who lives alone, the migrant domestic worker, or the poor rural woman faces various disadvantages.

Some of these include:

- gender;
- disability;
- age;
- poverty;
- geographical position;
- employment;
- migration;
- family structures; and
- care giving duties.

The international approach to the issue therefore requires an intersectional approach.

The important question here is not:

"Do women get included?"

Rather,

"The women who get included and under what conditions, and who gets left out?"

This step is necessary for inclusion.

Social Security During Economic and Social Crises

Economic crises, pandemics, wars, and natural calamities may highlight the shortcomings of social protection mechanisms.

Women may face:

- unemployment;
- unpaid care work;
- unstable income;
- obstacles in accessing health services; and
- vulnerability to exploitation and violence.

Social protection may thus serve as an economic stabilizing tool, along with a rights-based one.

The international strategy increasingly acknowledges the significance of social protection as a vital tool for resilience-building against economic and social shocks.

Proposed Gender-Responsive Social Security Framework

Following the international standards, this paper suggests a Gender-Responsive Social Security Framework that is based on eight guiding principles:

- **Universality**

Everyone should be able to access a minimum package of social security.

- **Substantive Equality**

Gender-responsive social security policies should deal with gender inequality in structures and not just equality of treatment.

- **Life-Cycle Approach to Social Security**

The social security package needs to be provided from childhood till adulthood, maternity, disablement and old age.

- **Recognition of Care**

Unpaid care should not result in reduced social security benefits in the future.

- **Including Informal Workers**
Caregivers in domestic work, farming, casual work etc. need to be included in social security.
- **Adequacy**
The benefit must provide for a decent standard of living.
- **Accessibility**
Access to application, receipt of benefit, complaints and appeals process must be easy and accessible.

International Standards and the Indian Context

The international framework has considerable relevance for India.

The Constitution provides important foundations through:

- Article 14 — equality;
- Article 15 — prohibition of discrimination;
- Article 16 — equality of opportunity;
- Article 21 — life and dignity;
- Article 39 — socio-economic justice; and
- Article 42 — humane conditions of work and maternity relief.

India has also developed numerous social security measures addressing maternity, pensions, disability, workers' protection and healthcare.

Nevertheless, important challenges remain, particularly concerning:

- informal women workers;
- domestic workers;
- unpaid caregivers;
- migrant workers;
- women with disabilities;
- elderly women; and
- women with interrupted employment histories.

International standards provide a useful framework for moving towards a more universal and rights-based system.

Major Challenges

The principal challenges can be summarised as follows:

Challenge	Gender implication
Informal employment	Exclusion from contributory schemes
Unpaid care	Reduced earnings and pension entitlement
Wage inequality	Lower social insurance contributions
Maternity	Career and income interruptions
Disability	Multiple and overlapping disadvantages
Old age	Greater risk of poverty
Administrative barriers	Difficulty accessing benefits
Digitalisation	Possible exclusion of digitally disadvantaged groups
Inadequate benefits	Formal coverage without real security
Weak accountability	Limited remedies for wrongful denial

Recommendations

- These reforms need to be implemented in order to have an effective gender-responsive social security system:
- Develop social protection floors which provide universal coverage for basic healthcare and income security.
- Conduct a gender impact assessment of social security policies and legislation.

- Take into account unpaid care work when calculating pensions and social insurance.
- Secure informal workers, especially domestic and home-based workers.
- Improve maternity protection without establishing discriminatory employment practices.
- Establish independent entitlements in such a way that women would not be relying on their husbands alone to have access to social security.
- Maintain sufficient benefits with regard to actual cost of living.
- Conduct disability and age-sensitive policies due to intersectional vulnerability.
- Ensure simplified administration processes and easily accessible complaint channels.
- Apply gender-responsive budgeting and statistics to assess whether social protection alleviates inequalities.

Conclusion

International law has gradually evolved social security from an employment-centered welfare institution to an essential part of human rights and social justice. Social security is enshrined in UDHR and ICESCR, whereas the right to equal treatment is at the core of women's economic and social rights, according to CEDAW. Minimum standards for each major area of social security are set forth in ILO Convention No. 102, whereas Recommendation No. 202 promotes the idea of universal social protection floors grounded on dignity, equality, universality and accessibility.

Nevertheless, the presence of international standards does not automatically ensure gender equality. The key issue here is the difference between formal entitlement and actual access.

A gender-neutral social security system, which disregards unpaid care, informal employment, motherhood, pension gap, and the interplay of various grounds of discrimination may look gender-neutral formally but remain discriminatory effectively.

Therefore, the future development of international law of social security should be based on one fundamental and revolutionary principle:

Social protection should take into account not only social risks but also their distribution in an unequal way.

Social security which is gender sensitive needs universal minimum coverage, unpaid care work to be recognised, inclusion of informal sector workers, maternity and pensions cover, independent entitlements and accessibility and remedies.

In the end, it is impossible to realize gender justice when economic insecurity continues to target women more. Hence, social security has another function besides income replacement: social risk distribution, autonomy enhancement, care recognition and the transformation of the promise of equality into reality.

References

1. United Nations, *Universal Declaration of Human Rights*, 1948.
2. United Nations, *International Covenant on Economic, Social and Cultural Rights*, 1966.
3. United Nations, *Convention on the Elimination of All Forms of Discrimination against Women*, 1979.
4. International Labour Organization, *Social Security (Minimum Standards) Convention, 1952 (No. 102)*.
5. International Labour Organization, *Social Protection Floors Recommendation, 2012 (No. 202)*.
6. International Labour Organization, *Making Social Protection Work for Gender Equality*, 2024.
7. UN Women, *World Survey on the Role of Women in Development 2024: Harnessing Social Protection for Gender Equality, Resilience and Transformation*.
8. UN Women, *Universal Health Coverage, Gender Equality and Social Protection*.
9. Constitution of India, 1950.
10. International Labour Organization, *Social Protection Floors and Gender Equality: A Brief Overview*.

