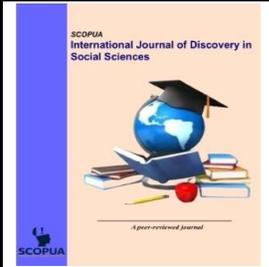




International Journal of Discovery in Social Sciences

Vol.2, Issue 1, February 2026
DOI: <https://doi.org/10.64060/IJDSS.v2i1.3>



Protection for Working Women: Comparative Study of Moroccan and Chinese Regulations

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Received: 27 November 2025 / Revised: 20 January 2026 / Accepted: 23 January 2026 / Published online: 01 February 2026

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ABSTRACT

This study examines the legal protection of working women based on their capabilities and dual role, considering the labor legislation of both the Kingdom of Morocco and the People's Republic of China, relying on the comparative and analytical inductive approach. The research problem is represented in the extent to which the legal texts enacted by Moroccan and Chinese labor legislators to protect working women can provide guarantees capable of dealing with the specificity of their capabilities and dual roles. Moroccan and Chinese legislators have allocated special legal provisions for working women, considering their capabilities and aiming to reconcile their family and professional lives. The legal texts regulating the protection of working women are the Moroccan Labor Code, Law No. 65.99 of 2003, and the PRC Law on the Protection of the Rights and Interests of Women, on October 30, 2022. This study highlights that they revolve around two main aspects: the first related to protecting the health of working women in view of their physiological and psychological nature, while the second relates to special protection for working mothers.

Keywords: Working woman; Protection of physical health; Protection of mental health; Dual social role; China labor act; Morocco labor code

1. Introduction

In the past, women's work was limited to performing their household duties and family affairs[1]. This did not bring them any financial income, but the industrial revolution created new and many work opportunities. It opened the way for women to enter the labour market in a big way[2]. Their presence became clear in various activities, and they entered functional and professional fields that were the preserve of men alone[3, 4]. They have an effective pioneering role and contribute to various economic activities[5]. But women have their own privacy, considering that they differ from their male counterparts in terms of the weakness of their physiological structure, their physical abilities, and their psychological state[6]. To mention that women are considered the basic pillar on which the family is based, so we find that the working woman is often responsible, in addition to her professional obligations, for organizing the affairs of her home and supervising its management, whether she is a wife, a housewife, or a mother. The uniqueness of women's physical and psychological abilities, and the duality of their role in society, has given them a legally privileged status, which makes it easier for them to reconcile the use of their potential between continuing to carry out their family affairs and their natural functions: such as pregnancy, childbirth, and breastfeeding on the one hand, and carrying out their professional obligations on the other hand[7-9].

The study attempted to answer the problem by addressing the legal protection of working women since their physical and psychological capabilities, as well as addressing the legal protection of working women, studying the duality of their social



role. The study has several important aspects, including informing us of the strengths and weaknesses in the Moroccan and Chinese legislations dealing with the issue of legal protection for working women. One of the most prominent conclusions of this study is that the legal requirements provided by the labor legislator mostly contributed to protecting the physical and moral health of working women, as well as reconciling the duality of their social role.

2. General Legal Protection for Working Women

Various labor legislations have granted working women an important role in participating and contributing to various work sectors, but the specificity of their physical makeup and moral status has required the legislator to develop legal texts that are compatible with that specificity. Therefore, Moroccan and Chinese labor legislators have given working women a special legal status. Talking about it requires us to examine the aspects of protecting working women based on physiological nature, then examine the aspects of protecting working women based on psychological nature.

2.1 Aspects of protecting working women based on physiological nature

Women's muscular strength is less than that of men, so various labor legislations have enacted legal texts that are compatible with the specificity of their abilities[10], which we will work to clarify by talking about the controls of the workflow at night. Through which they aim to protect the physical health of working women and keep them away from some exhausting and dangerous activities that are not suitable for working women and talking about the limits of the work that women are allowed to do.

2.1.1 The jurisprudential dispute over women working at night

There is an aspect of jurisprudence that has adopted the rejection of women working at night, justifying this by saying that it is more exhausting for a person than daytime work in general, and for women in particular. Studies have proven that industrialized countries that allowed women to work at night caused harm to women's health, considering that they are performing their household duties, which negatively affects the health of the working woman's children and affects her marital life. There is another aspect of jurisprudence that adopts the idea of women working at night, based on the principle of equality of opportunity between the sexes, considering that not allowing women to work at night is considered discrimination against them. The jurisprudential debate on the issue of women working at night was accompanied by a difference in the legislative requirements regulating this issue between legislation that expands the scope of women working at night, and others that narrow its scope.

Despite the negative effects of women working at night on them and on their family role in raising their children, the Moroccan legislator has permitted their work at night as a general rule after it was prohibited, which can be inferred from Article 172, paragraph one, of the Moroccan Labor Code[11]. The exception is to prevent their employment in institutions where the activity is continuous and seasonal, or where the work is based on the use of raw materials, or materials in the process of preparation, or on the use of perishable agricultural crops, and also in some institutions that are going through exceptional circumstances, provided that the labor inspector is granted a special exceptional license.

Thus, the second paragraph of Article 172 of the Moroccan Labor Code gave the authority to determine the conditions for women to work at night by a regulatory text[12]. In this context, Decree No. 2-04-569 was issued, which determined those conditions for women's work at night was subject to several new procedures, as it required the employer who wants to employ a woman at night to provide transportation from her place of residence to the workplace and back in the event that there is no public transportation, and to give her a break of not less than half an hour after every 4 hours of continuous work. Women must also be given a break between every two days of night work, of not less than 11 consecutive hours[13, 14].

Moreover, it prohibited night work for minor women who have not reached the age of sixteen, as a general rule, with the possibility of overriding this prohibition, in the event that the establishment's activity stops due to force majeure or an accidental stoppage, and this shall be within the limits of the lost working days, provided that the labor inspector is notified of this, and this exception should not be resorted to for a period exceeding twelve nights per year, except upon permission from the labor inspector based on Article 175 of the Moroccan Labor Code. Accordingly, it is clear to us that the Moroccan legislator made the general rule that women work at night, and the exception is the prohibition of their night work[15].

Returning to the position of the Chinese legislator on women working at night, we note that it differed from its Moroccan counterpart when it made the principle the prohibition of night work for women, with the exception of jobs that are explicitly permitted exclusively. One researcher believes that the Chinese legislator was successful when it made the prohibition of women working at night as a principle[16]. However, he criticized its expansion in the jobs exempted from this prohibition.



Article 6: This article explicitly states that female employees are prohibited from engaging in night work in jobs that are classified as hazardous or detrimental to their health. This includes industries such as: Mining, Construction, Manufacturing (in certain sectors), Chemical production, Other hazardous occupations.

Article 7: This article allows for exceptions where women can work at night, but only under safe conditions and with their consent. Employers must ensure that the working environment is safe, and they must provide necessary protections.

2.1.2 Limits of the work that women are allowed to do

There are some jobs that require more effort than women can handle. There are also some jobs that pose a risk to the physical health of female workers. This prompted Moroccan and Chinese legislators to intervene to ban women from working in some strenuous and dangerous activities, which we will discuss by discussing the prohibition of dangerous work, then discussing the prohibition of strenuous work. Moroccan and Chinese legislators prohibit women from engaging in dangerous activities, as is evident from the context of Articles 181 of the Moroccan Labor Code and article 6, 7 of the Chinese Labor Law[17, 18].

In this context, dangerous work is considered to be work that exposes a person to some physical factors, such as repairing machines while they are in operation, or health factors such as activities dealing with some toxic materials, or climatic factors such as working outdoors. For example, dealing with some toxic chemicals for a certain period of time results in the worker contracting occupational diseases, and leads to negative effects on the health of the working woman and birth defects in the fetus if the woman is pregnant, according to what scientific studies have proven.

According to China's Labor Act (1994) Section 59; it is prohibited to arrange female workers to engage in work down the pit of mines, or work with grade IV physical labour intensity as stipulated by the State, or other work that female workers should avoid[19]. In contrast, the Moroccan legislator referred to the prohibition of women working at night in jobs that pose a danger to them, but it is criticized for not clarifying those jobs sufficiently. Also, Decree No. 2.04.682 issued on December 29, 2004, regarding the list of jobs prohibited for women, minors, and the disabled, did not address jobs that contain chemical substances in its third article, which regulates the activities that women are prohibited from practicing.

2.2 Aspects of protecting working women based on psychological nature

The legal protection of working women is not limited to their physical health only but extends to include legal requirements aimed at protecting their moral and psychological aspects and preserving their components, in a way that ensures treatment based on respect for human dignity. This prompted Moroccan and Chinese legislators to devote aspects of protection related to the legal aspect of working women. Whether by preventing discrimination against working women or approving the personal rights of working women. Moroccan and Chinese legislation includes several provisions that enshrine the prohibition of discrimination against working women, the most important of which are the principle of gender equality in concluding an employment contract, and gender equality in pay.

2.2.1 Enshrining the principle of gender equality in concluding the employment contract

For a long period of time, women have suffered from discrimination in exercising their right to work, because of beliefs linked to some cultural backgrounds. A large group of business owners prefer to employ men instead of women, justifying this by the weak productivity of women, especially during pregnancy and childbirth, in addition to their frequent absence from work and their weak efficiency. Moreover, there is a prevailing belief in some Arab and Islamic societies that women's work is not important, considering that men in traditional societies are responsible for supporting the family, and women's role is limited to giving birth to children, raising them, and fulfilling the requirements of married life and household affairs. Therefore, most modern labor legislations have approved the principle of equality between men and women, and equal employment opportunities between them if they possess the same qualifications and have prohibited practices that discriminate against women and aim to deprive them of their right to work or reduce their practice.

This is the approach taken by the Moroccan legislator in the Labor Code, which included several provisions that emphasize the principle of gender equality in the right to work. As is the case in the preamble to the Labor Code, which states that "Every person has the right to a job that suits his health, qualifications and skills, and he has the right to choose his work freely and practice it throughout the national territory." This is a right granted to women and men alike. In addition, the second paragraph of Article 9 of the Moroccan Labor Code prohibited any discrimination between workers, whether since gender or otherwise, that would violate or distort the principle of equal opportunities in work. This was also emphasized in Article 478 of the Moroccan Labor Code in the second paragraph, which prohibited employment agencies from discriminating between the sexes in job opportunities.



The Chinese legislator followed the same approach, when he confirmed in Labor Law of the People's Republic of China in Article 6: Emphasizes the principle of equal employment opportunities for all citizens, regardless of gender. the key point on this article is that non-Discrimination, so employers are prohibited from discriminating against job applicants or employees based on gender. This means that hiring, promotion, and training practices must be fair and equitable and encouragement of diverse hiring, the article encourages employers to actively pursue a diverse workforce, ensuring that both men and women have equal access to job opportunities.

2.2.2 Establishing the principle of gender pay equality

Working women have long suffered from discrimination in wages between them and men, and the reason for this is that working women are less active in trade unions that defend workers' rights, and less protest violations against them, in addition to traditional attitudes that place women in a lower position than their male counterparts. Hence, international agreements played a major role in confronting forms of discrimination against working women in wages, and these provisions were enshrined in the Moroccan Labor Code, which was consistent with the spirit of international agreements related to gender equality in wages[20]. Thus, Article 346 of the Code stipulated that: "All discrimination in wages between the sexes is prohibited if the value of the work they perform is equal." In the same context, Article 105 of the Labor Code, in its paragraph (b), granted the collective agreement the role of determining how the principle of gender equality in wages is applied if they perform the same work.

In contrast, the Chinese legislator in Article 45 of PRC Law on the Protection of the Rights and Interests of Women Applying that: "The principle of equal pay for equal work between men and women. Women have equal rights to men in enjoying social welfare benefits[21]. In the same context Article 46: "The principle of equality between men and women must be adhered to, and there must be no discrimination against women in areas such as promotions, evaluation of titles and professional and technical positions, and training".

3. Protection of the Personal Rights of Working Women

Personal rights are those rights that derive their origin from the personality of the human being and guarantee the person the benefit of everything related to himself, such as his physical and intellectual powers. These rights cannot be isolated from the personality of their owner and constitute one of the elements of the person himself. Perhaps the labor legislator has set among his goals the application of these rights to the case of the working woman, the most important of which is protecting her right to marriage and protecting her right to choose her appearance.

3.1 Protecting the right to marriage

The right to marriage is considered an authentic human right, but it may be restricted by some employers, who may include the condition of not being married as a condition for concluding an employment contract. It is worth noting that Moroccan labor legislation prior to the issuance of the Labor Code did not include any legal texts preventing employers from stipulating the condition of not being married in employment contracts. This resulted in many employers placing a condition or clause in the employment contract that gives them the right to dismiss a working woman who is getting married without giving any warning or paying her any compensation.

But the Moroccan judiciary had the final say on this issue, and in this context the Casablanca Court of First Instance ruled in its ruling No. 155 issued on February 19, 1979: "Compensation for the dismissal from work suffered by a stewardess at Royal Air Maroc simply because she had concluded a marriage contract in violation of the general conditions of that company, which prohibits flight attendants from marrying as a condition for acceptance as employees". With the issuance of the Labor Code and its entry into force, the Moroccan legislator explicitly confirmed through Article 9 in its second paragraph the prohibition of any discrimination in employment based on marital status. Article 36 of the Labor Code stipulated a deterrent penalty for anyone who violates this, which is a fine ranging from 15,000 to 30,000 dirhams and is doubled in the event of a repeat offense.

As for the Chinese legislator in the newly enacted Women's Protection Law specifies that employers are prohibited from reducing the wages and benefits of female employees due to circumstances such as marriage, pregnancy, maternity leave, or breastfeeding. Additionally, it forbids any restrictions on the promotion, evaluation, or employment opportunities related to professional and technical roles for female workers. Employers cannot dismiss female employees or unilaterally terminate labor contracts or service agreements under these conditions. In contrast, the 2018 iteration of the Women's Protection Law only addressed wage reductions, dismissals, and the unilateral termination of employment contracts based on similar circumstances.



3.2 Protecting the right to choose one's appearance

An examination of the labor legislative texts contained in Moroccan and Chinese legislation shows us that they do not organize the protection of the right of working women to choose their appearance. As a result, in many cases, working women are subjected to discrimination because of their appearance, such as when they wear the hijab after concluding an employment contract. The employer may dismiss her from work or transfer her to another position with a lower job grade without her consent.

However, the labor judicial work in Morocco has addressed the situation, as the Court of Cassation's decision in file No. 600/5/1/2009 issued on December 9, 2010, stated that:

“While the work system within the requesting company requires workers to wear a protective hat on their heads, the use of the “head cover” that the requesting company committed to as a special way of dressing, in addition to the aforementioned hat, her doing so does not constitute a breach of the work system, nor does it affect the nature of her work. Therefore, the request of the management of the requesting company to remove the veil placed on her head, as stated in the cassation article, constitutes an infringement of her personal right, and in light of the absence of the file, which proves that this prevents her from performing her work in the required manner, or that it obstructs it in any way, and in light of the requesting party's insistence on her personal right to a specific way of dressing, her leaving her work, if it was done by her in light of the insistence of the company's official to abandon her, is considered a disguised dismissal from her work, with which she is entitled to the compensation that the labor law allows her, which is what the contested decision concluded. Correct, and this explanation derived from the facts established in the file replaces the criticized explanation, and what remains is the means that has no basis...”

In general, despite the protective requirements that the Moroccan and Chinese social legislators have established for the benefit of working women, they remain insufficient in terms of providing protection for their personal rights. The employed woman needs more legal texts that enshrine her right to exercise her personal rights without any threat to that exercise.

4. Legal Protection for working women in view of their dual social role

Women have undoubtedly become contributors to various economic sectors, but in addition to that, women also have to perform familial and educational roles, especially in the case of married women and mothers [22, 23]. This has imposed on various labor legislations to establish legal requirements that consider the dual role of working women in many cases. Therefore, Moroccan and Chinese legislators have worked in turn to give women with dual roles a special legal status that takes into account the need to reconcile the professional role and the family role, which we will seek to address by talking about granting the working mother rights related to the stage of childbirth, and granting the working mother rights related to the period of her contact with and care for her newborn.

4.1 Granting working mothers their rights related to childbirth

The delivery stage is one of the natural stages that all pregnant women go through, and in an effort by the labor legislator to provide special care for the working woman who is in the delivery stage, that granted her several rights that she can enjoy during this stage. During this requirement, we will go to addressing the various legal requirements stipulated in the Chinese and Moroccan labor legislation related to the delivery stage, by talking about granting the working mother the right to maternity leave, then moving on to talk about the duration of maternity leave.

4.2 Granting working mothers, the right to maternity leave

Granting pregnant working women maternity leave is considered one of the most important aspects of maternity protection, which is why various labor legislations have approved it, and have allowed working women, whether before or after giving birth, to take time off from work, enabling them to regain their strength after giving birth and care for their newborn. Like other labor legislations, Moroccan and Chinese legislators have adopted maternity leave, which requires us to study the various aspects of this leave, address the conditions for its entitlement, and then address the wage due for it.

4.2.1 Maternity leave eligibility conditions

The Moroccan labor law does not base a working woman's entitlement to maternity leave on any conditions and does not require that the worker spend a certain period in the service of the establishment. It also does not restrict a working woman's benefit from maternity leave to a specific number of births, so she always benefits no matter how many times she has pregnancies.



In contrast, the Chinese law stipulates that: To be entitled to paid maternity leave, a woman must generally have worked for at least 10 months (or 1 year) before giving birth. This requirement can vary slightly depending on local regulations, but the standard is typically around this duration.

It is clear from what was discussed above that the Moroccan legislator was more protective of maternity than its Chinese counterpart, considering that a working woman benefits from maternity leave without considering the length of her work with the employer. In contrast, we noticed that the Chinese legislator stipulated that a woman must spend a specific period at work to benefit from maternity leave, which means depriving new female workers in the establishment of the right to benefit from this leave.

4.2.2 The amount of wages due to a working woman during maternity leave

The legal protection of a working woman during her maternity period requires providing her with a financial income that helps her meet her needs, so that she is not forced to return to work before the end of her leave period, which may endanger her health and the health of her newborn.

Therefore, the Chinese legislator considered that: During basic maternity leave, female employees receive a maternity allowance in place of their regular salary, if they have participated in maternity insurance for a specified period, as mandated by the local maternity insurance scheme. Nevertheless, there is no universal rule on whether maternity allowances cover the extra maternity leave granted by local government. In practice, the policy varies from province to province, or even city to city. In cities where the extra maternity leave is not covered by the maternity allowance, employers are required to pay the employee's salary during the extra maternity leave. This further results in employer's reluctance to hire female employees who are under childbearing age.

In contrast, the Moroccan legislator did not refer in the Moroccan Labor Code to the issue of the amount of wages that should be given to the working woman during this leave, but by returning to the Moroccan Social Security Law, it becomes clear to us that it granted the working woman during the period of her cessation of work for the sake of childbirth, daily compensations extending for fourteen weeks, but on condition that the working woman is registered with the National Social Security Fund, and has 54 days of subscription during the ten months preceding the date of her cessation of work for the sake of childbirth, and the Moroccan Social Security Law specified that the amount of compensation granted to the working woman for this period is 100% of the average daily wage during the six months preceding her cessation of work.

4.2.3 Maternity leave duration

The duration of maternity leave according to Article 152 of the Moroccan Labor Code is fourteen consecutive weeks divided between the period before and after childbirth. The first seven weeks are before childbirth, and it is an optional leave period for the working woman who has the right to choose whether to take it or not. As for the remaining seven weeks of leave, it is after childbirth, and it is a compulsory leave during which she is prohibited from doing any work for the employer or for anyone else.

As for the Chinese legislator stipulates that: The basic maternity leave, also known as national maternity leave, is 98 days for normal childbirth, as stipulated in the Provisions on Female Labor Protection under Special Circumstances (State Council Decree No. 619). An additional 15 days will be granted to those under special circumstances, such as dystocia. In the case of a multiple birth, an additional 15 days of maternity leave shall be granted for each infant. A female employee who suffers a miscarriage during the first four months of pregnancy shall be entitled to 15 days of basic maternity leave, while a female employee who suffers a miscarriage after the fourth month of pregnancy shall be entitled to 42 days of maternity leave. The local extra maternity leave ranges from 30 days to 3 months, as stipulated in the local population and family planning regulations.

5. Working Mothers' Rights and Care for their Newborns

After the woman goes through the pregnancy stage and the birth process is complete, she enters another stage related to caring for her newborn, as well as following up on his various affairs. This matter made the labor legislator seek to adapt the texts of the labor law in a way that is consistent and compatible with the necessity of the woman performing the role assigned to her towards her newborn. And by shedding light on the rights granted to the working woman to perform her natural role towards her child in Moroccan and Chinese legislation, we will address the protection of the working mother's right to contact her newborn, and the protection of the mother's right to care for her child.

5.1 Protecting the right of a working mother to contact her newborn



The mother is the closest person to her newborn, as he or she needs her milk as a natural food for him or her, which cannot be replaced by other types of milk, as it was proven in a medical study that the number of deaths among children who are breastfed artificially is ten times the number of deaths among children who are breastfed by their mothers, and therefore it is not permissible to deprive the newborn of this necessary need for him or her during the times that his mother spends in her daily work inside the facility, especially in the first months of his or her birth.

In line with the requirements of Article 5 of International Labor Convention No. 103 on the Protection of Maternity for Breastfeeding, and to preserve the psychological stability of the working mother and the health of her newborn; the Moroccan legislator has allowed the working woman to breastfeed her newborn during working hours, and granted her a paid breastfeeding period of one hour per day, for a year from the date of resuming her work after giving birth. This is the same approach taken by the Chinese legislator when granting the working woman, the right to a breastfeeding period or periods during work of not less than one hour per day for a year from the date of giving birth, aiming to provide special protection for the newborn's right to breastfeed from his mother. This period was considered part of the actual working hours and therefore paid.

5.2 Protecting a mother's right to care for her child

After giving birth and joining her work, a working mother may need a period to accompany her child in order to raise and educate him. Therefore, labor legislation grants her the right to suspend the work relationship between her and the establishment for this reason without losing her job. This permission appeared in international law within the framework of Recommendation No. 123 of 1965 on the work of women with family responsibilities. In line with international law, the Moroccan legislator did not limit childcare to granting the working woman a break for breastfeeding only, but rather introduced a system that grants her the right to obtain unpaid leave for a period of one year to raise her child, provided that she notifies the employer within a maximum period of 15 days from the date of the end of the maternity leave. As for the Chinese legislator, it stipulated in Article 47 An employer shall, in accordance with the law, protect women's safety, health and the right to rest at work based on the characteristics of women. Women shall be under special protection during menstrual period, pregnancy, confinement period and lactation period.

6. Conclusion

Through the completed research, we discussed the legal protection of working women based on their capabilities and dual role considering Moroccan and Chinese legislation. The study reached several results and recommendations as follows:

1. Moroccan and Chinese legislators have worked to provide legal provisions aimed at protecting working women, which are largely consistent with the human rights system on the one hand and have contributed to protecting the physical and moral health of working women, as well as reconciling the duality of their social role on the other hand.
2. Moroccan and Chinese legislators are criticized for not having legal mechanisms capable of monitoring and tracking the implementation of the principle of gender equality in employment.
3. Moroccan and Chinese legislation are criticized for not subjecting prohibited work to women to periodic review, so that the labor law can keep pace with changes.
4. The protection of the personal rights of working women in Moroccan and Chinese legislation has not received sufficient attention.

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Declaration

Conflict of Study: The authors declare that they have no known competing financial interests or personal relationships that could have appeared to influence the work reported in this paper.

Author Contribution Statement: Both authors conceived the idea and designed the research; Analyzed and interpreted the data, and wrote the paper.

Funding Statement: This research did not receive any specific grant from funding agencies in the public, commercial, or not-for-profit sectors.

Availability of Data and Material: Data will be made available by the corresponding author on reasonable request.

Ethical Approval: Not Applicable

Consent to Participate: Not Applicable

Declaration of AI Use: Not Applicable

Acknowledgment: Not Applicable

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