



Labour Law and the Migrant Worker

Research Report



Centre for Women's Development Studies

(An autonomous research institute supported by the
Indian Council of Social Science Research)

New Delhi - 110 001

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FOUNDATION

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Indian Council of Social Science Research

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Labour Law and Migrant Workers

Introductory Preface

A striking feature of economic development in India is that a major part of the country's non-agricultural workforce and significant numbers of seasonal workers in agriculture are migrants. The increasing domination of temporary forms of employment, the mismatch between service led growth and low employment generation, the movement of industries out of settled cities into more sparsely populated hinterlands, even as city populations are being expanded as people move urbanwards in search of employment opportunities, the fact that India's industrial growth in the new century has been principally driven by that most migrant dominated industry - construction, and of course agrarian crisis leading to widespread agrarian distress, have all fuelled mobility and migration, while throwing up new concerns regarding migrant workers' rights. As such, there is a particular need to critically look at the gamut of labour laws from the perspective of migrants. This has become all the more necessary since the ongoing discussions around 'labour reforms' or towards a 'simplified' set of labour codes have largely left the concerns of migrant workers out of their ambit.

Among other issues, one of the most neglected issues is the doubly subordinated manner by which women are being integrated into the migrant workforce and the gender blind nature of many of the country's labour laws. Thus, in some key migrant occupations such as brick making across the country or sugarcane harvesting in western and southern India, the lack of an independent wage for women hired as a part of a family unit of labour at piece rates, has not received the attention in law and its administration that any commitment to women's equality would merit. Similarly, the segment/class of domestic workers, who are predominantly migrants, and have become overwhelmingly feminised, are yet to find their place in the architecture of labour laws, of earlier as well as more recent vintage.

It is in such a context that the Centre for Women's Development Studies (CWDS) undertook a series of research activities to develop a grounded and experience based perspective on issues of labour rights, labour law and the migrant worker from the vantage point of women

migrant workers. Jharkhand as a key outmigration oriented state, West Bengal, as a sending and receiving state, and the National Capital Region as a destination for migrants from both states, were the sites for primary level field research. Given the less diversified occupational profile (in comparison to male migrants), and concentration of women migrants in but a few sectors/segments of the workforce that has been documented in an earlier study (CWDS, 2012), our research was of course, focused on the sectors/segments of female concentration.

The objective in this study, was to understand how labour law interacts with migrant workers and vice versa, and initially we were working towards preparing a manual that would address the issues, problems, and experiences of women migrant workers in relation to specific labour laws.

Even as the study proceeded, the ground beneath our feet shifted and convulsed as labour law and its administration entered a phase of acute flux. Indeed the very foundations of labour law and its procedures are being comprehensively transformed at such an accelerated pace in India, that it increasingly made little sense to draw up a manual that would become irrelevant even before it was finalised. As such, the purpose of the research had to undergo a change and the study has moved towards developing a perspective on the issues of migrant workers in the shifting landscape of labour laws in India. It now aims at developing an understanding of the thrust of change in labour laws in India, and link it to the ground experiences, locations, and situation of some specific categories of migrant women workers.

The field studies in this report were conducted among women working in construction and brick kilns in Jharkhand, in paid domestic work in Jharkhand and Delhi, and in tea plantations in north Bengal.

Conceptual Issues and Perspectives

a) The changing landscape of labour law in India

At the outset, it may be noted that our approach to labour law is rooted in the conception of its primary role as a countervailing instrument against the inequality of power that workers face in relation to employers, all the more evident in the case of migrant workers. Such a conception was most clearly articulated by Otto Kahn-Freund in his famous Hamlyn lectures of 1972. In his words:

“Law is a technique for the regulation of social power. This is true of labour law, as it is of other aspects of any legal system. Power-the capacity effectively to direct the behaviour of others-is unevenly distributed in all societies.It rests on many foundations, on wealth, on personal prestige, on tradition, sometimes on physical force, often on sheer inertia. It is sometimes supported and sometimes restrained, and sometimes even created by the law, but the law is not the principal source of social power.”

“The relation between an employer and an isolated employee or worker is typically a relation between a bearer of power and one who is not a bearer of power. In its inception it is an act of submission, in its operation it is a condition of subordination, however much the submission and the subordination may be concealed by that indispensable figment of the legal mind known as the "contract of employment." The main object of labour law has always been, and we venture to say will always be, to be a countervailing force to counteract the inequality of bargaining.”

It is from such a foundational conception of the purpose of labour law that our study has looked at the changes taking place in India’s labour law regime. It must of course be acknowledged that the premises laid out in the above quotation do not have much traction with neo-liberal frameworks that have become so influential in directing the India’s economic and social policies since the 1990s. Nevertheless, it is also worthwhile noting that, of all the structural changes (called reforms) brought about by the rise to dominance of neo-liberalism, the most bitterly contested and delayed have been in relation to the legal regimes governing labour. India’s labour law framework had been established, in part by the Indian constitution (1949), and in part, by periodic upsurges and actions of various contingents of workers in India (Mazumdar, 2007). Considerable resistance had indeed stalled and delayed many of the changes sought to be brought about in such a framework.

Despite the halting nature of changes in the labour law regime in the 1990s and 2000s, the period in which this study was conducted, was marked by an accelerated pace to the neo-liberal restructuring of labour laws. The extended sweep and scale of ongoing changes in labour laws has been immensely challenging for this study. The challenge has been compounded by the fact that scholarly analysis of the changes that have been instituted or are on the anvil, have been patchy and intermittent. Not surprising, since the pace of change has been such that any study of the extant landscape of labour law now has an extremely short

shelf life (sometimes of just a few months) before it becomes out of date in the face of new developments.

We ourselves faced this problem after a seminar that was organized in March, 2016 for the overall project on Labour Law and the Migrant Worker, of which this study is a part. The seminar had drawn a remarkable cross section of scholars and practitioners of labour law including some of the finest legal minds in India - from bench and bar - along with women's studies scholars and activists, trade unionists, historians, economists, etc. The papers presented addressed a gamut of issues and questions in relation to migrant workers. These papers and discussions indeed helped clarify several ideas that have shaped our approach to some issues and questions addressed in this study. However, within a few months of the seminar, several changes in individual labour laws were introduced and then followed by a massive and ongoing exercise in amalgamation of several laws into a set of four labour codes. A whole new set of issues had emerged, requiring fresh application of mind. Such a fast moving scenario has compelled us to locate this study in what is still an undeveloped field of scholarship, and amidst a still changing context.

Nevertheless, it is fair to say that the relationship between the instrumentalities, objectives, and rhetorics of ongoing changes in labour laws have become significantly clarified in this most recent phase of changes. The overview of the changing landscape of labour law in this study, thus focuses on presenting a perspective analysis of the thrust and direction of changes taking place in, rather than detailing clauses in the various draft bills and pending bills of the central government that may yet be tweaked and reformulated along the way. Such an analysis includes a critical review of past and present laws towards developing an integrated perspective on labour law's relationship with migrant workers in general, and women migrant workers in particular.

b) Interlinked Dimensions in approaching women migrant workers' location in labour law: informality and unpaid labour

Women's work and employment in India, has long been defined by their disproportionate concentration in the unorganized sector, which in India, is used interchangeably with the informal sector. Overarching debates on employment in the field of women's studies, of course also focused on a) invisibility of women's work and women workers, b) the non-recognition and therefore underenumeration of unpaid women workers in the production economy, particularly in traditional agriculture and household economies, c) the sexual

division of labour, and d) women's concentrated presence in the category of the self-employed - among whom a large proportion fall into the sub-category of unpaid helpers. Four decades of women's studies in India was able to empirically delineate the overwhelming force of the unorganized sector and informal employment relations in the profile of paid or income earning women workers, and visibilize unpaid forms of women's labour. Both were important contributions to a deeper understanding of the structural dimensions of labour and employment in India. On a more theoretical plane, discussions on women's unpaid work dealt mostly with the domestic sphere - what is often referred to as the sphere of social reproduction - although unpaid labour in the production sphere has remained central in empirically oriented studies in India.

Unpaid work by women in the visibly public wage economy, particularly the migrant wage economy, and the legal mechanisms by which employers directly exploit unpaid work by women, has however, remained at the periphery of the major theoretical, statistical, or policy oriented debates in women's studies. Where women wage workers have been in focus, analytical perspectives have centered on their involvement as individual paid workers, the persistence of gender based inequalities in wages and conditions of work, and their exclusion from the rights and entitlements that are conferred by labour laws. Indeed a considerable body of work has grown in relation to feminized paid domestic work that recognizes the predominance of migrants and focuses on the exclusion of domestic workers from legally recognized worker entitlements. Many of these studies have pointed the need for a law that can address the peculiar employment relations in which domestic workers are located (Neetha, N. 2014). Similarly, in the several studies on women working in the textile and garment factories which may otherwise fit into the classical ambit of labour law, the application or non-application of labour laws is critically evaluated. A significant part of the analysis in this study draws on the literature so generated.

The engagements with labour law with reference to women workers in these important segments of women's involvement in the wage economy are of course largely from a perspective on their situation as individual paid workers, although in the case of domestic workers, the participation of unpaid family members is known and discussed. The premise that participation in wage work is only as individual workers contributing individual units of labour, also underpins the premises of labour law and its framing of wage practices. At a foundational level, this study questions the universal application of such a premise. It locates its perspective in line with some earlier studies on this question that recognize the existence

of unpaid labour by women who are employed as either one of a pair (*Jodi*) or as one among a group of workers (usually in a family or kin group), in some significant segments of the capitalist wage economy (Agnihotri et al, 2009, 2012). It argues that such a recognition is lacking in the conceptions and application of labour law. The study thus follows and develops women's studies perspectives on unpaid work by women, into the realm of labour laws.

A parallel set of arguments on the privileging of the organized sector workers in labour law, and the lack of legal rights and entitlements of unorganized workers has of course also acquired great momentum and force across the past four decades. At a conceptual level, whether the unorganized or informal forms of labour were to be seen as being located in the informal sector or to be defined by informal employment relationships, developed more in labour studies. The National Commission on Enterprises in the Unorganised Sector (NCEUS, 2007) had pointed out that in the Indian context the enterprise concept (used to define the unorganised sector) and the employment concept (used to define unorganised employment) was lacking in conceptual clarity and uniformity across the sub-sectors of the economy. It sought to resolve the problem by focusing on the absence of legally defined social security and protection for conditions of work as a common thread that would define the category of unorganized workers, whether employed in the formal or informal sector (NCEUS, 2007). At the initiative of the ILO, an increasing stress on formalizing the informal is also being put forward as the way forward. In this study, the lines of division between formal and informal workers were found to be far more blurry and interpenetrated than assumed in the literature on informal workers. While this blurring has occurred in part because of changes taking place in the broader economy, the simultaneous dismantling of protections that were earlier offered to formal sector workers is also playing a role. We would like to point out here that the erosion of formal sector workers' rights and conditions, is increasingly calling into question the efficacy of the formalization strategy as a method of acquiring worker rights in the present era.

In general, informal sector workers and informal employment have been mainstreamed in public discourses on labour, as well as in the academic field of labour studies. Such mainstreaming includes a sweepingly critical view of long established trade unions for ignoring unorganized workers and women. Indeed organized or formal sector workers, and their trade unions now appear to be located at the margins of the bulk of academic literature on labour, being usually categorized as privileged in status and patriarchal in their organizational representation. Such labelling has persisted, even as casualization, contractor

mediation, and short term or impermanent employment relations (all hallmarks of informality) have become normalized in formal employment based on written employment contracts, raising questions about any hidebound distinctions between the formal and informal. Further, a development that has largely gone unnoticed in the academic world, is the rapid increase in female membership and emergence of dynamic women leaders in the established mixed gender trade unions who were generally held to be bastions of patriarchy. Most of the women in these unions are workers who would be classified as unorganized or informal workers. That their share of trade union membership now exceeds their share in the country's workforce has been so surprising that no one talks about it.

Why this is important to note is because much of the ongoing restructuring of labour laws is being done in the name of bringing unorganized and informal workers within the ambit of labour laws. It appears that if studies of labour laws need constant updating in the face of rapid changes from the top, several theorizations and assumptions that developed around unorganized workers, segmented labour markets, gender and labour, also need to be more critically reviewed, when looked at from ground upwards. In this study, the intersections of policy discourses on unorganized workers and the ongoing restructuring of the legal regimes governing all labour, are however, only briefly touched upon as part of the background. Our primary focus is on developing an interlinked perspective on how migration, unpaid labour in wage employment, and other gender issues figure in the ongoing restructuring of labour law that is taking place.

Nevertheless, with reference to our field studies, it bears mention here that while construction, brick kilns, and domestic workers are universally recognized as integral to the unorganized sector and informal employment relations, it is not so easy to categorize workers in plantations. Plantations, being governed by the Plantation Labour Act, 1951, which outlines several entitlements of workers, are classified as organized sector under the Indian labour law regime. And yet, the impact of the historical legacy of plantation workers being drawn from migrant stock, predominantly of tribal/advansi origin, and the low wages and unfreedoms that continue to define their lives, it is indeed difficult to accord plantation workers with the privileged status that is normally associated with the formal or organized sector.

c) Intersecting developments: Labour Law and Anti-Trafficking laws

A third dimension related to trafficking, that was not envisaged in our initial framing of this study, entered the field of our enquiry in the course of our research engagement with the changing structures of laws governing women's migrant workers. In all three states where we were conducting our field research, public discourse around women's migration inevitably veered around discussions around trafficking, especially with reference to domestic workers. Although the legal architecture that has developed around human trafficking functions along a separate track from labour law, in recent years noticeable intersections have emerged. These can be seen in the legislative arena as well as in anti-trafficking interventions on the ground. Such developments made it clear that the foundational separation of labour laws and anti-trafficking laws needed to be engaged with.

It was a series of cases of physical and mental abuse of migrant domestic workers, including adolescents, who were associated with placement agencies that propelled labour laws and anti-trafficking laws towards some points of intersection. With the amendments to the Child Labour (Prohibition and Regulation) Act that became law in 2016, domestic work was listed as a hazardous industry for the purposes of employment of adolescents (aged 14-18). While adolescent labour is not banned as such, it was prohibited in hazardous industries. At the ground level, interventions against migration of adolescents for domestic work increasingly took recourse to the anti-trafficking machinery that had been put in place across the past decade or so.

At the same time, a Delhi High Court directive of 2010 brought the issue of regulation of placement agencies by labour law to the fore, and conceived of such regulation as an intervention against trafficking. It led to the issuance of the **Delhi Private Placement Agencies (Regulation) Order, 2014** for compulsory registration and licensing of those placement agencies which provided domestic workers under the state labour law governing Shops and Establishments or the central law governing inter-state migrant workers. Similarly, the **Jharkhand Private Placement Agencies and Domestic Workers (Regulation) Bill** passed by the Jharkhand State Assembly in 2016, was expressly formulated as a measure against trafficking. (At the time of writing, this bill was to be reintroduced, having been sent back by the State Governor's office for reconsideration towards enhancing the punishment of traffickers.)

While these developments were taking place in labour law, a parallel process with respect to anti-trafficking laws was shifting the emphasis in the conception of trafficking away from its earlier sole preoccupation with commercial sex. From amendments to Criminal laws in 2013 that widened the conception of trafficking to the more recent central government bill on trafficking introduced in 2018, a shift in focus towards trafficking for labour is perceptible. Anti-trafficking laws of course, fall under the criminal law framework defined by police actions/interventions and its framework of ‘raid, rescue and rehabilitation’ (Kotiswaran, 2016). Enforcement of labour rights in conditions of work that is a function of labour law finds no place in such a framework. How the two systems of law relate to each other, or whether indeed they can be related, is an unfolding story which is still to take shape. What is of relevance at this stage is a recognition of the fact that anti-trafficking laws are grounded in conceptual and structural frameworks that are substantively and functionally different from labour laws. For example anti-trafficking laws set out to rescue and rehabilitate victims of trafficking while prosecuting and punishing intermediaries as criminals. Labour laws on the other hand is oriented towards regulation of intermediaries, thereby giving them legal status.

Our field studies were not designed to engage with trafficking, and indeed workers’ concerns were not framed in the language or framework of trafficking. That remains an area for further field research. However, the interface between anti-trafficking laws and labour laws is emerging as a frontline area. In such a context and with the extension of the field of anti-trafficking laws to include forced and bonded labour, it was felt necessary to undertake a tentative exploration of developments in the field of anti-trafficking laws. A preliminary exploration of recent developments in trafficking laws is thus undertaken as a postscript to this study.

Research Questions and Methodology

At a general level, the principal research questions that were posed for the field studies was to investigate the extent to which migrant women workers were informed about labour laws, to evaluate their conditions of work, and to analyse their experience of the application of labour laws, with respect to basic rights, entitlements and freedoms as workers, as women, and as citizens of India. That these questions are not amenable to simple generalisations is obvious since in each of the sectors/segments/sites of our study, women were embedded in distinctively different labour processes and employment relations. Further, their employment relations had been shaped by qualitatively different social and historical conditions of

migration. Differences in regional, sectoral, and even organizational histories needed to be accounted for, if the research was to generate meaningful insights.

The nature or type of migration is also different even within sectors. While construction and brick kiln workers are more involved in circular migration, domestic workers could be either long term or medium term migrants. Plantation workers, on the other hand, are settled migrants whose continued sense of being migrants has more to do with historical legacies and continued lack of place in the social milieu surrounding the plantations. What linked these different segments of women workers, was less related to categorization as unorganized or organized workers or one or other type of migration, and more to their involvement in manual labour.

Finally, as is well known, the work lives of the women working in these sectors and regions, are indelibly intertwined with their social location as women in poor families, as members of disadvantaged communities. In Jharkhand and North Bengal, the study approached women workers who were predominantly of tribal origin, while in Delhi, the study approached the class of workers, regardless of social group.

Our methodological universe was thus defined by a sector-cum-region based approach and a range of research methods with differing but related sets of questions. The objective was to capture the range of experience within the continuum of occupations that are defined by hard manual labour, with a focus on tribe and class. The emphasis in this study has been on qualitative methods, including interview based case studies and focus group discussions, although the study of domestic workers in the Delhi destination was conducted through a questionnaire and used quantitative methods of analysis.

The various methods of study deployed were mostly determined by a degree of prior knowledge of the field. Thus, in the tea plantations, focus group discussions with workers were combined with in depth interviews with plantation union leaders. In Jharkhand, sector based focus group discussions and in depth interview based case studies of migrant women workers were the primary methods of research. In Delhi on the other hand, the primary method involved a sample survey of domestic workers with a structured questionnaire. Live out domestic workers were approached in squatter settlements, resettlement colonies and unauthorized colonies, while live-ins were approached through a snowball method.

A flexible and mixed method approach indeed provided scope for grounding of the study in the specific conditions obtaining in the sectors/region where the women workers were located. Many of the new insights and aspects of conceptual and empirical nature that have emerged in this study would have been missed if only one common method was followed.

Acknowledgements

This study is the product of many contributing researchers from within and outside CWDS. From within CWDS, Prof. N. Neetha was closely involved with each stage and component of the study, from conception to the final report stage. Sonali Sharma played a key role in the initial stages of the project and was assisted in the work by Bhaswati Guha Thakurta. Prashant Upadhyay analysed the data generated by the survey in Delhi and prepared that are the tables provided in Chapter. The Delhi survey was overseen by Nayantara Singh.

Independent researchers Anjor Bhaskar and Preeti undertook the field work in Jharkhand and prepared a detailed research report, from which Chapter II of this report is drawn. They were assisted by Ankur Saxena and Alik Bannerjee. Sneha Pande assisted in the field work among tea plantation workers in north Bengal and prepared the preliminary field report from which much of Chapter III of this report is drawn. Ashmita Sharma put together the main elements of chapters II, III, and IV drawing on the field studies/reports, and greatly enriched the study of plantation workers with her own background knowledge of the field.

Administrative support for the study and its components was provided from CWDS by R.N. Pillai, while R. Sundaresh designed and formatted the report. C. Prakash, K. Lalitha and Vinayak Sharma all contributed to the financial side of the research management. CWDS director Prof. Indu Agnihotri of course contributed in several ways. Apart from providing sustained support for the entire research process, she played a key role in the organization and conduct of field work Jalpaiguri in West Bengal.

Neither the research nor this report would have been possible without the support provided by Oak Foundation. It was Oak Foundation's Programme officer Paromita Chowdhury, who persistently pushed for the research agenda. Her patient support through the many hurdles and delays encountered on the way, and her understanding of the need to restructure the form and content of this report has been a rare and inspiring force behind the study. Sabrina Mendes guided the project and CWDS staff through various administrative requirements,

including facilitating the participation of CWDS staff in a Finance Workshop for Oak Foundation grantees.

Finally, this research could not have been possible without the contribution of the scores of women workers who gave their time, and applied their minds to the questions that the research addressed. The particular quality of their strength in the face of immense hardship, the warmth and friendship that they extended to researchers indeed gave inspirational strength to the research process, and vested the field research experience with a humanity that is both rare and universal.

Chapter I

The Changing World of Labour Law in India: An Overview

Several studies have pointed to the fact that migrant workers tend to fall through the cracks in labour law as well as other citizen entitlements in India. The reasons for this are various and include requirements of domiciliary status for access to rights in some cases, lack of ability to prove an employment relationship in others, or even because many of the occupations that are peculiarly migrant in nature tend to coincide with forms of labour that largely fall outside the net of labour laws and their enforcement. Further, for migrants - tardy legal processes results in their inability to access any final outcome/settlement of any claim they might make because they are on the move while the labour law enforcement machineries and courts are not. Even the one labour law that is specifically focused on migrant workers, namely the Inter-state Migrant Workmen's Act is caught in this conundrum of a mobile workforce and static law enforcement machinery, and has been termed one of the most ineffectual of labour laws in India (NCEUS, 2007).

At a fundamental level, it is axiomatic that the spectrum of labour laws that govern wages, employment relations, and social security are applicable to both migrant and non-migrant workers. This applies also to the protections for collective bargaining institutions that define the structural premises of labour law and uniquely allow for the countervailing force of collective action by workers against the inequalities of power that inhere in employment relations. At the same time, the prevalence of distress migration, of dependence on circular or seasonal migration for survival, of the correspondence between migrants mobilized from dalit or tribal communities and work occupations involving hard manual labour cannot be denied (CWDS 2012). Both the economic compulsions of distress, and the social targeting of dalits and tribals for hard manual labour at migrant destinations, suggest unfree conditions of work and discriminatory practices that are not easily dealt with by the normal structures of labour laws. In such conditions, and as is the case for migrant as well as sedentary forms of unorganized sector employment in India, some of the universalist assumptions of labour law become difficult to apply.

Further, a narrow outreach and enforcement of labour law in India has long undermined and limited the democratizing force of its institutions. Many key labour laws become applicable to establishments that employ at least 10-20 workers (the threshold having recently been increased to 40 workers for medium and small industries), they assume availability of durable round the year employment in such establishments, their premise is that the employment contract is made with free labour, and they are mostly geared to direct rather than contractor mediated employer-employee relationships. This has made for lack of access for the majority of workers in India, and particularly short term or even medium term migrant workers, to key entitlements of workers conferred in labour laws. In a country, where 58 per cent of female labour migration and even more of male labour migration is of a temporary nature (Mazumdar, Neetha, Agnihotri, *EPW*, 2013), it effectively means structural exclusion of the majority of migrants from the ambit of labour laws. As such, while the thrust of the principle of equality tends towards the application of general rights of workers to migrant workers, the exceptional features of migrant experience cannot be ignored. So the inevitable question as to whether migrants should at all be treated as a special class of workers has complexities that do not admit to easy answers.

Migrants in the inherited corpus of Indian Labour Laws

Within such a broad context, **The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979** [ISMWA] has been the only labour law in India with a specific focus on internal migrants. It addresses contractor driven migration where advances are paid for recruitment, and where such advance based tying of labour is the norm. It however, excludes intra-state migrants from its ambit, and is not applied to vulnerable situations of inter-state migrant workers who may be driven by distress, but have travelled from their homes on their own. Since the ISMWA, which is a central law, sought to address debt based bondage of labour migrants, it has been closely associated with the **Bonded Labour System (Abolition) Act, 1976** [BLSA].¹ The BSLA itself commands an

¹ The Bonded Labour System (Abolition) Ordinance, 1975, was promulgated by the President on the 24th October, 1975. The Bonded Labour System (Abolition) Bill, 1976 was passed by both the Houses of Parliament. Both Ordinance and Act were initiated by the Emergency Government of Indira Gandhi. Later, following the enactment of the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, a specific explanation was inserted in the BLSA which clarifies that any system of force or partly forced labour by which contract labour on Inter-state Migrant Workmen are required to render labour or service in is "bonded labour system".

iconic and benchmark status in India, since it illegalized bonded labour induced by customary relationships *and* debt, and also their manifestation in imposing constraints on contract labour and inter-state migrants (who may also be bonded to contractors through the system of advances).² It thus provides an adaptive definition of bonded labour that incorporates debt based bondage, along with feudal custom and caste based systems of extracting forced labour, listing the colloquial names for 31 customary systems in the act.³ Further, the implementing authority for BSLA is the district collector/magistrate and not the less powerful labour department officials. Implementation includes rehabilitation packages financed by the Union Government. Overall it could be said that more powerful administrative structures and resources were pressed into action by the law against bonded labour in comparison to other labour laws. As such, although the BSLA is routinely listed as a labour law in India, in fact, it's administrative structures and indeed its social intent which is citizenship based, follows a different norm from the labour laws that grew in response to industrial action by workers. In its thrust against bondage, BSLA extinguishes debts that lead to bondage, but has little by way of regulatory mechanisms or delineation of worker rights and entitlements within the employment relationship.

Significantly, a Supreme Court judgement of 1982 that had extended the definition of bonded labour to include all workers who are paid less than the statutory minimum wage was not given procedural or administrative effect in the three and a half decades that have followed the judgement.⁴ Being paid less than statutory minimum wages remains a common experience for a majority of workers across India, for which the bonded labour abolition law

² See Ravi Srivastava (2005)

³ Forced labour Adiyamar, Baramasia, Basahya, Bethu, Bhagela, Cherumar, Garru-Galu, Hali, Hari, Harwai, Holya, Jana, Jeetha, kamiya, Khundit-Mundit, Kuthia, Lakhari, Munjhi, Mat, Munish system, Nit-Majoor, Paleru, Padiyal, Pannayilal, Sagri, Sanji, Sanjawat, Sewak, Sewakia, Seri, Vetti;

⁴ India's Supreme Court Judgement in People's Union for Democratic Rights and others Vs. Union of India and others [1982 II LLJ 454 SC (1982) 3 SCC 235] expanded the definition of forced labour under BLA to include "Any factor which deprives a person of a choice of alternatives and compels him to adopt a particular course of action, may properly be regarded as 'force' and if labour and service is compelled as a result of such 'force' it could be 'forced labour'. The word 'force' must be construed to include not only physical or legal force but also force rising from compulsion of economic circumstances which leaves no choice of economic circumstance to a person in want and compels him to provide labour or service even though the remuneration received for it is less than the minimum wage. Therefore, when a person provides labour or service to another for remuneration, which is less than the minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the words 'forced labour'

is rarely applied. This is evident from our field studies as well. Still, and despite valid criticisms that the operation of BLSA and ISMWA have not been able to bring about any significant change, there are hundreds of thousands of migrant worker families whose binding debts were indeed extinguished, some of whom have been given housing and land, and thus provided with some (even if temporary) relief in their coerced lives.⁵

The ISMWA, on the other hand, was firmly rooted in the labour law enforcement machinery and its structures, although lacking in effective mechanisms for coordination between states. It operates through the labour departments of different states, even though it was enacted as a central law. Its provisions are directed at regulating contractors who mediate migration, while defining some key entitlements of workers, such as (a) regular payment of wages; (b) equal pay for equal work irrespective of sex; (c) suitable conditions of work to such workmen having regard to the fact that they are required to work in a State different from their own State; (d) suitable residential accommodation to such workmen during the period of their employment; (e) medical facilities to the workmen, free of charge; (f) protective clothing to the workmen ; (g) in case of fatal accident or serious bodily injury. Although directed primarily at regulation of contractors, with the onus of responsibility for fulfilling its conditions primarily of the contractor, ISMWA also specifies liability of principal employers to ensure that the conditions specified under the law are met.

The enactment of ISMWA was linked to public acknowledgement of oppressive conditions of contract workers, which was given a partial expression in the **Contract Labour (Regulation and Abolition) Act. 1970** (CLRA). The general consensus of opinion at the time of enactment of CLRA, was that the system of contract labour lent itself to great abuse, and should be abolished over time, for which the Government was given the power to prohibit contract labour 'wherever possible and practicable'. In cases where the system could not be abolished altogether, CLRA provided for regulation of working conditions of contract labour so as to ensure payment of wages and provision of essential amenities, through licensing of contractors and defining some obligations of contractors and principal employers to their workers.⁶

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⁶ Contract Labour (Regulation and Abolition) Act. 1970, Introduction.

The evolution of the multi-tiered labour contractor system as a major feature of labour migration in India, of course has a long history. Its roots lie in colonial practices of mass mobilization of labour from poverty stricken communities and transporting them far away from their homelands (using inducements and/or force) for hard labour under coercive conditions where few were ready to work of their own volition. In some studies of colonial industrialization, these contractors have been quite appropriately described to as patriarchs or labour lords.⁷ However, the CLRA did not set out to address migratory contract labour and had its roots in the establishment or factory based use of in-contracted labour. In fact CLRA effectively gave the government the power to decide on where contract labour would be abolished. Prior to CLRA adjudication by labour courts and industrial tribunals were allowed to regularize contract workers where they found that contract labour was used in order to hide the fact that they were regular workers in the establishment, and the broad consensus was that contract labour in perennial work should be abolished. Such a consensus was fractured in the post 1990s era. Even at the level of the higher judiciary, there have been differences as to whether contract workers are to be regularized in cases of abolition.⁸

Gender and the Inheritance of Absence

Despite being grounded in a humane approach to labour, neither ISMWA nor CLRA nor even BSLA address women's concerns. An assumption of male gender of course characterized most of the first and second generation labour laws of independent India, reflected in the practice of using the term workman for workers. While ISMWA asserts the application of the Maternity Benefit Act (1961) which at that time provided for 12 weeks maternity leave, and also includes equal pay for equal work as a right (following the enactment of the Equal Remuneration Act, 1976), it completely fails to make these provisions meaningful to the context and situation of the very section of migrant workers that the law addresses. CLRA does not even refer to maternity leave or equal pay.

⁷ See for example, Lalita Chakravarty, Emergence of an industrial labour force in a dual economy-British India, 1880-1920', *Indian Economic and Social History Review*, Vol. 15 (1978)

⁸ A tangential matter of interest is that almost all the defining cases of contract labour abolition that came before the Supreme Court in the post 1990s phase were with reference to public sector, and mostly for cleaning staff. While there was a significant presence of women in such cleaning staff, their status as migrants is unknown. The issues at stake in most of these cases were either whether the specific abolition was procedurally correct and/or whether workers were to be absorbed as regular workers after such abolition.

In the streams of labour migration that were sought to be addressed by ISMWA, the system is based on wage advances given to families by contractors well before they migrate, the work is usually seasonal in character, and women are often recruited to work as part of family units rather than as individual migrants. In such situations, it is quite common for women to not receive any individual wages, let alone equal wages.⁹ The bonded dependent status in which women workers are so placed have not however, been considered by this one and only law for migrant workers in India. Similarly, maternity leave becomes a meaningless provision where wages are paid at piece rates that are linked to output. At best it would mean leave without pay with the promise of continuance upon return to work. As with many vintage labour laws, the conceptual inability and silence regarding specific issues of women, in the Inter-state Migrant Workmen Act and the Bonded Labour System Abolition Act, is quite glaring.¹⁰

Although the perspective in CLRA, BLSA and ISMWA draw on labour policy frameworks that revolved around ideas of free and humane conditions for workers in the Indian Constitution, it is well to remember that BSLA was enacted in the shadow of an authoritarian Emergency regime (1975-77) in India. It seems to us that in such a context, it was probably inevitable that it contained a top down administrative approach and less engagement with worker representation than most other labour laws in India. Further, despite provision for greater administrative force, it is widely acknowledged that BLSA has not succeeded in eliminating several forms of bonded labour, and ISMWA is considered to be one of the most ineffectual of labour laws in India.¹¹ The efficacy of CLRA is dependent on the government's decision to prohibit contract labour in any given establishment, something that is becoming increasingly rare, and mostly with reference to the public sector. The regulatory part of CLRA is only marginally more effective than ISMWA, and most contractors exceed their licensed quota of workers with impunity.

⁹ See for example, the laboring pair units called *Koyta* (comprising of a man and a woman) among migrant sugarcane harvesters in western India or *Jodi* units recruited as moulders for brick kilns. (Teerink, 1995, Agnihotri, etc. 2009, Mazumdar, etc. 2013)

¹⁰ The only clause that refers to women in ISMWA, 1979 is on equal pay 'irrespective of sex', although the Maternity Benefit Act is one of the laws that is listed as applicable to inter-state migrants, and which specifies that employers are liable for, the payment of maternity benefit at the rate of the average daily wage. Since in many instances, women migrants are part of family units of labour and their husbands are paid for collective labour at piece rates, women often do not actually have an independently calculable wage.

¹¹ NCEUS

What is however, notable is that through several campaigns and court petitions regarding the bonded conditions of contract workers, and particularly migrant contract workers, there has been little growth of perspective on the specific conditions of women workers in bonded labour migration at any level. No data is ever provided as to the number of women workers released from bondage under the BSLA, and there has been no discussion on the lack of independent wages for women migrating in family units of labour when payments are made at piece wages and generally to the leading male member.¹²

Interestingly, neither BSLA nor ISMWA have been applied to forced labour like conditions imposed on young women/girls working in modern industries, where the prime movers are the mill/factory owners/managements. For example, spinning mills and some garment factories in Tamil Nadu had, from the late 1990s, developed a range of practices of bringing young women/girls recruited (through agents) from high poverty rural hinterlands into factory production in and around Coimbatore. The living quarters for these girls were in residences/hostels in factory premises or under the control of factory managements/employers. The initial instruments used included a) getting girls or their parents to sign bond contracts that tied them to a given mill/factory (usually for three years), b) designating production workers as training apprentices for long periods and making them work night shifts (not legally permitted for apprentices), c) depriving them of minimum wages and freedom to move out, exercising control over their movements beyond working hours, and d) promising a lump sum that was much lower than their dues at minimum wage rates at the end of their contract period.¹³ A special camouflage used to hook girls and their families, was the naming of such a practice as a scheme for Sumangali (meaning the happy and blessed married woman) or ‘marriage assistance’ (read dowry), with reference to the promised lump sum at the end of the contract.¹⁴ Initially, the girls so recruited were from

¹² A point to consider is that the campaigns against bonded labour in particular follow a social reform perspective have focused on legal activism and rarely connected with trade union organisations, agricultural labour unions, or organisations of the peasantry that are class based.

¹³ Known as the ‘Sumangali Scheme’ or ‘Marriage Assistance Scheme’ Tamilnadu, that became common during the 1990s in textile mills in Tamilnadu.

¹⁴ An account of the evolution of these practices and public responses/interventions, including from the trade union movement may be found in *Macro Level Understanding of Sumangali Scheme and its impact on the lives of Camp Coolie Workers and the economic share of the Camp Coolie Workers in the National and International Economy* published by SOCO Trust and Actionaid, accessible online at <https://9dd22cecb57cc7c49673951a-f40fpgic7vvq2ruqx.netdna-ssl.com/wp-content/uploads/2017/07/Macro-Level-Understanding-of-Sumangali-Scheme....pdf>

within the state of Tamil Nadu (from the poorer southern districts), but recruitment grounds now include other states, where disadvantaged castes/communities are particularly targeted for mobilization. The multi-layered coercion involved in such cases had evoked public outrage and engagements with law and policy in Tamil Nadu, which is discussed in greater detail later. Here, we merely point out that the labour laws against migrant bondage have not been applied, not least because of their silence on gender.

The absence of gender is of course, characteristic of most of the labour laws enacted between 1947 and the 1970s. It was only after the 1975 report of the Committee on the Status of /Women in India (CSWI), that attention was drawn to the equality agenda in labour laws. CSWI had articulated the need for a well-defined policy to fulfil the Constitutional directives of Equality and what it termed as the ‘Government’s long term objective of total involvement of women in national development.’ Among its recommendations in the realm of labour law were the need for an Equal Pay law, extension of the **Maternity Benefits Act, 1961** (which at that time provided for 12 weeks maternity leave), to all industries and workers including agricultural workers. An important CSWI proposal that has been left languishing in obscurity was the recommendation to institute a Central Fund for maternity relief by levying contributions from employers.¹⁵ Adding to previous thinking on the Central Fund (for maternity benefit) CSWI had suggested inclusion of a levy on agricultural farms, employing hired labour, the quantum depending upon the size of the holding.

The Equal Remuneration Act, 1976 that was enacted on the recommendation of CSWI, laid down the principle of pay parity. It defined parity for work of a same or similar nature in any given establishment. Yet it did not refer to prevailing wage rates in an industry. As such pay for a female dominated cadre/designation/occupation in one establishment could remain lower than similar cadres in other establishments in the same industry. Further, studies have shown that for the labour departments, this law has been reduced to a formality of maintaining registers rather than engaging with substantive issues of wage inequality (Kapur et al, *Equal Remuneration in India*, 1998).

¹⁵ Prior to the CSWI, this recommendation had already been put forward by the 1st National Commission on Labour (1969)

Unorganized sector, unorganized workers

CSWI had also pointed out that the majority of women workers were in the unorganised sector who were outside the net of labour laws. Through the first two decades after independence, the majority of the women workers continued to live and work in a mix of semi-marketised, semi-monetised, non-contractual or only partially contractual economic subsistence activities. Such activities and relations within and outside their household, were concentrated in agriculture, or petty production and services. Initial avenues of development generated wage employment for uneducated women could perhaps be located in unorganised construction and related sector. In general, even such employment reached women over relatively more tortuous depths of immiserisation and displacement from the traditional economy that have since delineated women's subaltern status in employment structures. It was such a situation that led to the disproportionate weight of the unorganized sector in the female labour force, which came to be recognized as a defining feature of women's employment from the mid-1970s onwards.

If at the level of labour policy the unorganized sector referred to the sectors and industries that fell outside the ambit of labour law, trade unions had always approached unorganized workers as those who were left outside the organized trade union fold. The term 'unorganised labour' was thus used by the first labour commission (1969) to refer to "workers who have not been able to organise themselves in pursuit of their common interests due to certain constraints like casual nature of employment, ignorance and illiteracy, small and scattered size of establishments, etc." It included a) Contract labour including construction workers, b) Casual labour, c) labour employed in small scale industry, d) Handloom/Power-loom workers, e) Beedi and cigar workers, f) Employees in shops and commercial establishments, g) Sweepers and scavengers, h) Workers in tanneries, i) Tribal labour and j) Other unprotected labour.¹⁶

Agricultural labour was addressed by the Commission as a separate category, and legitimately so as their laege numbers, social location, relations, and conditions merited separate treatment. The state of knowledge regarding the conditions of unorganized workers was considered inadequate and it is in the period following the 1969 Report that studies on

¹⁶ Report : First Report of National Commission on Labour, (Ministry of Labour , 1969)

unorganized workers began to be undertaken with some urgency. This then was the context that saw the enactments of CLRA, BLSA, ERA, and ISMWA in the watershed decade of the 1970s.¹⁷

By the 1980s, ILO had shifted to the use of the term informal sector and informal workers rather than unorganized workers, although a uniform definition of the informal sector remained elusive.¹⁸ Initially used to describe the urban 'kaleidoscope', of family based self-employment in petty trade and manufacture, the concept of the informal sector held great appeal for those interested in bringing the issues of invisible women workers onto the agenda of national policy in India. It seemed to be able to absorb within itself the experience of lack of clear definition or official record of not only several aspects of women's economic activity, but also major contingents of women workers such as homebased workers. In India, the term informal sector was incorporated in the *Shramshakti* report of the National Commission on Self-Employed Women and Women in the Informal Sector (1988) and the concept was applied to both own account workers as well as piece rated wage workers who may not be located in establishment premises.

Even before the birth of the concept of the informal sector however, the unorganized sector had attracted legislative attention in India, albeit attuned to the specific features and labour processes, rather than under any umbrella category. For instance, the **Plantation Labour Act (PLA), 1951**¹⁹ is a law that was formulated and implemented to regulate conditions of work and provide for labour welfare in the plantations. Plantation labour, in contrast to the

¹⁷ Several new central laws specifically targeting sections of the unorganized workers were brought into existence, including The Beedi and Cigar Workers (Conditions of Employment) Act, 1966, the Contract Labour (Regulation and Abolition) Act, 1970, The Bonded Labour System (Abolition) Act, 1976, the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, along with Welfare Cess and Fund Acts covering workers in the Beedi industry, Cine industry, and in Iron ore, Manganese ore, Chrome ore, Lime stone, Dolomite and Mica mines. For women, this period saw the enactment of the Equal Remuneration Act, 1976.

¹⁸ See Paul E Bangasser, (2000), The ILO and the informal sector : an institutional history.

¹⁹ (a) Any land within five hectares or more that is used or intended to be used for growing tea, cinchona, cardamom, coffee or rubber and in which 15 or more people are or were employed on any day of the preceding twelve months;(b) Any piece of land within five hectares or more that is used for growing any plant referred to above, in which 15 or more people are or were employed on any day of the preceding twelve months, after obtaining the approval of the Central Government, the State Government by notification in the Official Gazette (Tea Board of India 2015 , [http://www.teaboard.gov.in/pdf/policy/Plantationsper cent20Labourper cent20Act_ amended.pdf](http://www.teaboard.gov.in/pdf/policy/Plantationsper%20Labourper%20Act_amended.pdf)).

characteristics of both industrial and agricultural labour, is unique in a number of ways (Sharma 2016:111). Based on the cultivation of a type of crop, the plantation, as defined by the PLA 1951, creates a distinction between plantation labour force and agricultural labour force. The former is more akin to industrial labourers who are also wage earners, whose only connection to the land they work on is through their employers. However, the plantation labour force is differentiated from its industrial counterpart by: the seasonal nature of their work; low wage levels; permanently settled residence on the plantations; mode of payment; mechanisms of labour control; and geographical location away from the cities. As a result of these variations, the plantation labour force sits between agriculture and industry (ibid.).

Importantly, plantation labour in north Bengal and Assam comprised of migrants, mostly of tribal origin who were transported far away from their homelands around the Chhotanagpur plateau by colonial planters through agents known as *arkatties*. Segregated from the local populace by a colonial planter Raj, whose brutality was legendary, plantation labour was kept dependent on their employers for work and residence. Such a dependence rendered plantation workers particularly vulnerable. It is because of these unique characteristics that the PLA, 1951 was enacted as one of the first sector specific laws to fundamentally protect the interests of the plantation workers, and sought to formalize rights and entitlements of a workforce that otherwise had all the features of unorganised workers.

Similarly, the Beedi and Cigar Workers (Conditions of Employment) Act, 1966 applied to home workers, who were thus included them in Indian labour law almost two decades before the ILO Convention on Home Work was adopted. Such sector specific labour laws of course left out many other contingents of workers. If in the case of plantation workers, it was the fervour against the colonial planter raj among the general populace that led to the enactment of a special law for plantation workers, in the case of Beedi workers, it was the significant presence of trade unions among beedi workers that played a major role. An uneven development of trade unions, and the emergence of various categories of employers and their pressure groups from within the Indian social milieu, no doubt restrained the thrust for widening the field of labour laws to include other categories of unorganised workers.

It is indeed a paradox that a greater focus on laws for unorganised workers accompanied the official turn to liberalisation in economic policy (from 1991), which was otherwise interested in dismantling some of the labour rights that were being applied in the organised sector.

Concerns about the lack of laws for unorganised workers were expressed in the Eighth Plan (1992-97) and again in the Ninth Plan (1997-2002). The ninth plan period also saw the constitution of the 2nd Labour Commission with the twofold task of i) *to suggest rationalisation of existing laws relating to labour in the organised sector*; and ii) *to suggest an Umbrella Legislation for ensuring a minimum level of protection to the workers in the unorganised sector.* ²⁰ The expansion of labour laws for unorganised workers was thus twinned with the reduction of some of the protections that existed for organised sector workers. Again in 2004, the Govt. constituted the National Commission for Enterprises in the Unorganised Sector (NCEUS) whose terms of reference included *review of Indian labour laws, consistent with labour rights, and with the requirements of expanding growth of industry and services, particularly in the informal sector, and improving productivity and competitiveness*; and also *review the social security system available for labour in the informal sector, and make recommendations for expanding their coverage.*

In the meantime, a mounting clamour for enactment of laws for different categories of unorganised workers had led to public campaigns for new laws for some specific contingents of unorganised workers. The most successful of these campaigns was one that led to the enactment of **The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996**, (BOCW Act) and the **Building and Other Construction Workers' Welfare Cess Act, 1996** (BOCW Cess). The two interrelated BOCW laws following the broad template of regulation of employment conditions and providing for social welfare through a cess on output, that had been established in earlier labour laws for other unorganized workers (eg. Beedi workers). Further, the BOCW Act and its rules was able to precisely delineate the working and safety conditions required for the various technical categories of tasks and functions performed by construction workers. It took cognizance of the contractor and principal employer, as well as architects, and specifies their responsibilities to workers.

The BOCW laws provided for the safety, healthcare and social security of the construction workers registered under the Act. It included provision of pension for workers above 60 years

²⁰ Report of the National Commission on Labour (2002).

of age and expenses for treatment of major ailments and education of children. State governments were to make employers liable for the provision of basic facilities.

Similarly, unions and organisations of domestic workers started demanding a separate legislation for domestic workers, precisely because the specific nature of their site of work is private households and not commercial or production establishments as has been the case in labour laws so far. The fact that these workers are mostly employed simultaneously for multiple employers, that their wages are mostly task based, and that the sector is largely feminised, etc. have all given a unique character to the domestic worker sector. Within the sector there are further distinctions between live-in and live-out domestic workers, and these distinctive sub-categories have distinctively different employment relations, even as their tasks may overlap with each other.

The live-in domestic worker involves a full-time relationship between worker and employer, and involves a beck and call relationship since they stay in the employer's home. The same may not apply to the live-out workers whose activities in any given home may be part time, and whose working day may involve several homes and employers. Intermediaries who recruit from rural areas are prominent in the case of live-ins, and the systems of recruitment that have evolved require a wider system of regulation and may overlap with trafficking. On the other hand, live-outs may have other issues and experiences, such as where to leave their children while at work, and being more easily associated with organisations and unions, since they have greater facility for mobility and wider interaction. While the first struggles of domestic workers centred around the demand for inclusion under the Minimum Wage Law, the larger demand for both a special law and policy received a fresh impetus from the ILO Convention on Domestic Workers (2011). It may be mentioned here that while the **Minimum Wages Act, 1948** applies to organised and unorganised workers, its applicability to any category of workers depends on their inclusion in its schedules. In most states of India, domestic workers have still to be included in minimum wage schedules.²¹

The problem of non-recognition of the specific context of domestic workers when generalised labour laws are applied unthinkingly, came to the fore when it was announced in 2016, that

²¹ By 2012, seven states in India had included domestic workers in the schedules of employment under the Minimum Wages Act. They were Andhra Pradesh, Bihar, Jharkhand, Karnataka, Kerala, Odisha, and Rajasthan.

domestic workers were being included as ‘other beneficiaries’ under the Employees State Insurance Corporation (ESIC) for medical benefits and health insurance. **The Employees State Insurance Act, 1948** (ESI Act), under which ESIC was constituted, envisaged an integrated need based social insurance scheme that would protect the interest of workers in contingencies such as sickness, maternity, temporary or permanent physical disablement, death due to employment injury, etc. Its institutional medical services and insurance schemes have been built by contributions from employers and workers. In the office order giving effect to the inclusion of domestic workers, it was specified that they were being granted only some of the otherwise fairly comprehensive benefits provided for by ESI Act. For example, the order stated that no artificial limbs or prosthetics will be provided for domestic workers, and it is stipulated that family members can only avail of benefits in the state in which the worker is registered. Families of migrant domestic workers in their area of origin were thus left out. Most significantly, domestic workers were placed in the category of ‘self-employed workers’ by the ESIC. The onus for payment of ‘user contribution’ was placed on the ‘insured person’ (worker) and unlike under the ESI Act, 1948, there is no compulsion on the employer to contribute.²² Further, while in general, the ESIC reimburses employers if they have to arrange for First-aid Medical care and transport of accident cases, no such reimbursement is offered for ‘self-employed’ workers. Finally, a draconian stipulation provides for irrevocable exit from ESIC and its benefits, if delay in payment of the worker’s contribution exceeds just three months from the due date since no re-entry is then allowed.

It has been pointed out that the categorisation of domestic workers as self-employed compromises their struggle for recognition of private homes as a site for wage work, frees employers from any legal commitments, and has long term implications in terms of the domestic workers’ struggle for minimum wages and other basic rights at work including regulated hours of work, paid leave, etc.²³ Identified as marking a casual and indiscriminative approach of the state with regard to the issues of these workers, such an arbitrary inclusion of unorganised and informal workers under the ESI scheme has been

²² The worker’s contribution is fixed at Rs 600 per quarter/Rs 200 per month.

²³ Presently, while the Minimum Wage law is applied to domestic workers in some states of India, in others it is not. Domestic workers have however, recently brought within the ambit of the Unorganised Workers Social Security Act, 2008 and Prevention of Sexual Harassment at the Workplace Act, 2013 and welfare boards exist in a few states, though actual operation and coverage is extremely limited.

sharply critiqued as not taking into account the needs of the workers, and simultaneously eroding the egalitarian approach to benefits under the ESI Act (Neetha N, 2017).²⁴ The noticeable lack of any leeway for re-entering the scheme in case of short to medium term difficulties in paying the contribution, is yet another example of how the absence of permanency or protection from removal/dismissal of unorganised workers in general has not been accounted for. Such arguments are indeed also relevant for the ongoing process of bringing in all categories of workers under a common umbrella or reduced to a set of common codes without recognising some crucial differences not only between formal and informal workers, but also material differences between sectors, between categories of workers as well as employers. The casual setting aside of differences in relation to worksites, sectors, and forms of mediation between workers and employers is one of the factors that is holding back advances made by the struggles of several categories of workers, including from among those defined as unorganised workers.

A similarly casual and some might say disingenuous process was at work in the enactment of the **Unorganised Workers Social Security Act, 2008**. This umbrella law had been sharply criticized for *not providing for any social security entitlements*, and for and merely setting up Social Security Advisory Boards without any powers or funds.²⁵ Even the Parliamentary Standing Committee to which the bill had been referred had commented that it lacked ‘proper and sufficient spadework required for such a significant piece of legislation.’ The Standing Committee, in fact prepared an amended bill that specified a minimum set of entitlements of workers to social security, and introduced the concept of a dedicated National Social Security Fund to ensure permanency, continuity and sustainability of the National Minimum Social Security Scheme. The Standing Committee argued that reliance on annual budgetary support

²⁴ N.Neetha, ‘Employees’ State Insurance Scheme for Domestic Workers: Yet Another Mockery’ MARCH 18, 2017 *Economic & Political Weekly*. Neetha points out that the Government has been dragging its feet over several years regarding a National Policy on Domestic Workers as called for by the ILO Convention (which has yet to be ratified by India). A notice was issued in October 2017 by MOLE, GOI asking for comments from the public on formulation of a national policy for Domestic Workers (last date Nov. 16th). Domestic workers’ organizations have repeatedly pointed out that already several rounds of consultations and comments on various drafts have taken place, without any actual results.

²⁵ T S Sankaran pointed out that the recommendations of the Second National Labour Commission (2002), the Report of the Petitions Committee of Lok Sabha, the Report of the Parliamentary Standing Committee for Labour and the Report along with draft laws prepared by the National Commission for Enterprises in the Unorganised Sector had all been ignored by the Act.

could put the National Minimum Social Scheme into jeopardy due to changing priorities of the Government of the day. Even as the final Act used some of the terminological changes recommended by the Standing Committee, it did not incorporate the substantive aspects of the Standing Committee's draft bill. It did not, for example, include the clause that specified that 'The Central Government shall formulate and notify in the Official Gazette Schemes entitling all the unorganised workers' to a specified set of 'national minimum social security benefits within a period of three years', the value of which were to be 'adjusted for inflation every two years.' Nor did it accept the related proposal to constitute a 'National Social Security and Welfare Fund'.²⁶

Further, of the list of what are termed 'Social Security Schemes for the Unorganised Workers' in the Act, almost all were pre-existing government schemes for citizens that mostly have a below poverty line (BPL) conditionality for access. In other words, among unorganised workers, only those belonging to officially designated BPL households would be eligible as beneficiaries of such schemes. Despite some adjustments made over the past decade, including labour department officials being empowered to declare workers of some designated categories as eligible (thereby bypassing the need for providing proof of being below poverty line), the essential contours of the schemes for unorganised workers fail to live up to the objective of providing social security in text as well as practice. An exceedingly low quantum of benefits, a conceptual framework of poor relief rather than worker rights, no compulsion on employers to contribute, and no consideration for intermittent unemployment when it comes to workers' contribution, has remained the chief characteristics of 'social security' policies for unorganised workers that have so far been devised.

Non-implementation of Labour laws: the case of BOCW Act

Casualness is also apparent in the way labour laws are actually implemented or rather mostly not implemented. In the two decades of its existence, the expectations of a new access to rights and welfare for construction workers envisaged by BOCW Act, has been belied by the

²⁶ The Standing Committee had constituted a 5 member Drafting Committee which consisted of S/Sh.Suravaram Sudhakar Reddy (CPI), Arjun K. Sengupta (Chair, NCEUS), Furkan Ansari (INC), Thawar Chand Gehlot (BJP) and K.Chandran Pillai [CPI(M)]. Despite the broad spectrum of political opinion reflected in the Standing Committee, their substantive recommendations were not taken on board by the Government.

low penetration of the regulatory as well as Welfare provisions at the state and national levels.

Once an act is passed, it has to be notified. Subsequently, as per the procedure laid down in the two central BOCW Acts, an experts committee has to be set up to frame rules under the Act, the rules have then to be adopted, followed by translation into local languages. The next step is to set up a Tripartite Board with representatives of the industry, the workers and the Government. A Cess Commissioner has to be appointed to collect the levy as per the Cess Act. Finally, employers and workers have to be registered with the Board. It is only when this infrastructure is in place that the workers registered with the Board become entitled to social security and welfare benefits. After the enactment of the two laws, initially, only six states moved towards implementation namely, Delhi, Tamil Nadu, Kerala, Gujarat, Pondicherry and Madhya Pradesh. Now, the board is formed in many other States including Haryana, Uttar Pradesh, Andhra Pradesh, Karnataka and Bihar among many others. However, in most of the states, the implementation did not take place successfully. In some states, though the board has been formed, very little registration of workers taking place. In other states the formation of the board is still in its preliminary stage. Such is the situation, some 20 years after the enactments.

Further, as noted by the Supreme Court in 2015, even where all procedures seemed to be in place, “the State Governments are only interested in announcing the schemes, and not in the formulation, efficacy and supervising the schemes.” Unfortunately, neither the central nor the state governments wish to increase their manpower required to implement the law. Labour departments are notoriously understaffed and despite the significant resources that were gathered from the cess on construction activities, or the various fees that are collected by several labour departments for grant of licenses, the problem of understaffing has only become magnified over the years.

The Supreme Court had particularly noted the non-utilisation of the large amounts collected through the cess on construction activities. That is why the Court asked these States to file affidavits with regard to the collection and utilisation of the amounts under the Cess Act. However, the filed affidavits did not take the matter of utilization of funds and the matter subsided for a while in 2015. Later, in 2017, the office of the Comptroller and Auditor General (CAG) filed affidavits. Again the court noted the discrepancies between the figures

provided by the CAG and those provided in the report of the Parliamentary Standing Committee on Labour (2016-17). It was further noticed that hardly 10% of the collected fund was utilized for the worker's benefit, and was mostly used for advertisements etc. The final judgment of the Supreme Court on the implementation of BOCW laws (March, 2018) also notes that even the constitutional body CAG authorized under Article 148 of the Constitution does not have the required and accurate information about the funds collected and utilized which signifies that there is a financial mess in this area since 1996 (pg. 42). The financial mess as evident in the discrepancies pointed out in the Court's judgement are presented in the judgement in a tabular form and reproduced below.

Cess collected as per the report of the Standing Committee as on 31.03.2017 (Provisional) (in crores of rupees)	Amount spent as per the report of the Standing Committee as on 31.03.2017 (Provisional) (in crores of rupees)	Cess collected as per the affidavit of the CAG dated 06.10.2017 (in crores of rupees)	Amount transferred to the Welfare Board as per the affidavit of the CAG dated 6.10.2017 (in crores of rupees)	Cess collected as per the statement of the Secretary, Ministry of Labour and Employment as on 30.6.2017 (in crores of rupees)	Amount spent as per the statement of the Secretary, Ministry of Labour and Employment as on 30.6.2017 (in crores of rupees)
32632.96	7516.52	37060.90	37255.45 (not necessarily utilized) ¹⁵	37482	9491

Source: Supreme Court Judgement, March 19, 2018.

In a scathing indictment, the Supreme Court judgement of March 19, 2018 further states:

The only victims of this extremely unfortunate state of affairs and official apathy are construction workers who suffer from multiple vulnerabilities.

What makes the situation even worse is that many of the construction workers are believed to be women and at least some of them have small children to look after. That even they are victims of official apathy truly reflects a very sad state of affairs, and the loss already caused to them and other construction workers cannot be remedied. The reason for this is that it is not known which construction worker is entitled to get how much in terms of money or what benefit and under which scheme. Some of these construction workers from the 1990s and even later, may perhaps have unfortunately passed away or might be untraceable or old enough to deserve a pension. The question therefore is: What should be done with the

thousands of crores that have been collected for the benefit of construction workers but cannot be utilized for their benefit? Can the State Governments and the UTAs or the Welfare Boards unjustly benefit and fill their coffers at the expense of unknown and helpless construction workers, some of whom are women and some having small children? These are questions for which we have not been provided any answers at all - it is entirely for the Government of India and Parliament to decide how to legally appropriate these thousands of crores of rupees and then utilize the amounts for the benefit of construction workers, at least for the future, assuming nothing can be done for the past. It is a mammoth task for which the powers that be must brace themselves, if they are serious in assisting people with multiple vulnerabilities.²⁷

Unredeemed Promises: the case of the National Policy for Domestic Workers

A similar lack of purpose and casualness is visible in the case of Domestic workers, who have long been struggling against the servile status of ‘servants’ accorded to them in society. It is well known that they face subhuman treatment and untouchability based humiliations of not being allowed to use the toilets in their employers’ households (their workplace), in being allowed to drink water or eat food only from segregated vessels (they may be allowed to wash other vessels but are debarred from eating or drinking from them) and many other demeaning practices. Against such degrading conditions, domestic workers have been demanding recognition of their worker status in labour law and policy, and regulation of employment relations.

They have been demanding inclusion of domestic workers in minimum wage schedules at wage rates that will ensure a decent living. They have been demanding enactment of a specific law and policy for domestic workers that can regulate their employment relations, which are with private households (mostly simultaneously more than one household), and which do not fit into the standard employing establishments as defined in existing labour laws (as discussed earlier). They have been demanding the right to paid leave, including for maternity needs, the right to the normal limits of 8 hours of work for which they should earn a minimum wage. In line with the ILO Convention on Domestic Workers, they have also

²⁷ Supreme Court of India, March 19, 2018, W.P. (C) No.318 of 2006 etc.

been demanding a national policy that can ensure that this highly feminized category of workers can work and live in conditions of honour, dignity, and with social security.

Such a policy was indeed repeatedly promised to them, but in effect after several rounds of discussion, there has been little progress. Recently, a 2015 draft for a national policy for domestic workers reintroduced that symbol of indignity and servility in the term ‘servant’. Further, it tried to sidestep the specific issues of domestic workers by clubbing them with drivers, security guards, gardeners, waiters, etc. Unions and representatives of domestic workers have pointed out that such a clubbing together is incapable of addressing the peculiar situation of domestic workers or even of the other segments of workers who each have distinctive conditions of work and employment relations, and who are unlikely to benefit by being clubbed with domestic workers (Moghe, 2018)

While there is still no delivery on the promise of a national policy, a ‘Code of Standard Practices for Employment of Domestic Workers in India’ (SOP Code) was linked by a Cabinet decision of August 2015, to the draft National Policy that was being discussed, and the package was so designed as to remove all the above segments of workers from the ambit of a labour rights framework.

For one, the draft policy + SOP Code package blurred distinctions between unions and placement agencies, and the mandatory tripartite employment contract proposed, was thus virtually reduced to agreements between employers and placement agencies, registered with the government.

Secondly, the package proposed that the employment contract would be governed by contract law rather than labour law whereby disputes will be settled by arbitration and conciliation councils. Such councils are of course steeped in the property disputes among the rich and wealthy. They assume equality between parties to any dispute, unlike the principles established in labour laws that are premised on recognition of inequalities in the employment relationship since employers have greater economic and social power than their workers.

Thirdly, workers were to be compelled to register with agencies for getting Aadhar linked smart cards, and the list of duties of workers vis-à-vis employers include “not loitering” or “causing embarrassment or disrepute to the employer within the social settings”. This, in effect means that employers can on subjective grounds accuse workers of loitering and take

action against them, but workers are prevented from taking the route of public protest against an oppressive employer, because it will bring disrepute within the social setting.

Fourthly, while it is said that their employers will contribute to social security for domestic workers, it did not include any mechanism for this purpose. Instead, tax exemption for employers was proposed for payments made to workers, or an incentive from the government for employers of domestic workers, for which detailed calculations were provided.

The above features reflect a regressive intent to segregate domestic workers from the labour movement, and deny them the special rights to collective action that derive legal sanction in a labour law framework. This renders the grandiose claim made in the draft policy that within 5 years, all three crore domestic workers will cross the poverty line and that good education will be provided to their children can hardly be taken seriously. As has been the experience regarding commitments to domestic workers, grandiose promises from the powers that be lead nowhere.

After months of discussion on the abovementioned draft policy that included involvement of the Cabinet, it was again announced in October 2017, that Govt. “is considering to formulate a National Policy for Domestic Workers” inviting suggestions from the public. What happened between 2015 and 2017 was not mentioned and whether the earlier draft and code has been abandoned is as yet unclear.

With all this flip flop on the part of the Government, there can be little doubt that the demand for legislation for domestic workers is indeed reverberating in political circles to a heightened degree. This may be gauged by the fact that no less than 5 private members’ bills on domestic workers have been introduced in parliament between 2015 and 2017 (4 in the Lok Sabha and 1 in the Rajya Sabha).²⁸

Shifting Agendas: Labour Laws in an era of mounting inequality

The past two and a half decades have seen several changes in the terrain of labour legislation and administration in India, and more are on the anvil. The buzzword heralding these changes is ‘labour law reforms’ which have been the labour policy companion of the rise to

²⁸ The 5 bills on domestic workers have been moved by MPs from the BJD, INC, BJP, and CPI (M). It is noticeable that of the 16 bills on domestic workers that have been moved since 1959, 5 were introduced between 2015 and 2017.

dominance of neo-liberalism in India's economic policy framework since 1991. A centrepiece of the arguments for labour law reforms has been that labour laws in India, which in any case apply only to a miniscule minority of organised sector workers, have produced rigidities in the operation of the market, and a removal of such rigidities will ensure a growth of employment. With most workers having remained untouched by labour laws, and for whom flexibilities in the form of easy hire and fire have always been the norm, such an argument appears specious at best.

The agenda of '**Labour Law Reforms**', although an ongoing process for some time, was moving in piecemeal fashion in the first two decades following the formal declaration of liberalization as the basis of economic policy in 1991. Legislative and non-legislative changes that have, over the past two and a half decades, been put in place in the name of reform, are too many to list or discuss in any detail. However, some key elements that are integral to the liberalization framework and indicate the direction of change include

- a) Procedural changes in labour administration directed at curtailing inspections to check on compliance with labour laws, and a greater emphasis on exemptions and self-certification by employers
- b) Legislative and executive changes directed at increasing flexible employment relations, allowing employers to go in for temporary (contract and casual) rather than permanent employees, thus increasing pressures on workers to be perennially on the move
- c) Restructuring of premises and principles of social security for workers towards cutting down on employers' contributions, greater emphasis on limited private insurance, and linking benefits with market behaviour rather than assured public provisioning
- d) Imposition of additional conditions and restraints on registration of trade unions, industrial actions and collective bargaining institutions.

These elements are also inbuilt into new legislations and schemes for unorganized workers, for whom, as discussed earlier, the characteristics of social security schemes have been so minimalist that to call them social security schemes is a misnomer.

Since 2015, an additional process of consolidating and ‘rationalizing’ existing labour laws into a set of labour codes has been initiated. Of four proposed Codes covering 1) Wages, 2) Social security, 3) Industrial Relations, and 4) Occupational Safety, Health, and Working Conditions, the Code on Wages has already been tabled in parliament (August 10, 2017).²⁹

The scale of the restructuring being undertaken by the Codes is evident from the number of laws that they seek to repeal. The **Code on Wages** seeks to replace/repeal The Payment of Wages Act, 1936, the Minimum Wages Act, 1948, the Payment of Bonus Act, 1965 and the Equal Remuneration Act, 1976.

The Code on Occupational Safety, Health and Working Conditions seeks to replace/repeal 1) The Factories Act, 1948, 2) The Mines Act, 1952, 3) The Dock Workers (Safety, Health and Welfare) Act, 1986, 4) The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, 5) The Plantations Labour Act, 1951, 6) The Contract Labour (Regulation and Abolition) Act, 1970, 7) The Inter-State Migrant workmen (Regulation of Employment and Conditions of Service) Act, 1979, 8) The Working Journalist and other News Paper Employees (Conditions of Service and Misc. Provision) Act, 1955, 9) The Working Journalist (Fixation of rates of wages) Act, 1958, 10) The Motor Transport Workers Act, 1961, 11) Sales Promotion Employees (Condition of Service) Act, 1976, 12) The Beedi and Cigar Workers (Conditions of Employment) Act, 1966, 13) The Cine Workers and Cinema Theatre Workers Act, 1981.

The Code on Social Security seeks to replace/repeal 1) Unorganised Workers’ Social Security Act, 2008, 2) The Mica The Employees’ Compensation Act, 1923, 3) The Employees’ State Insurance Act, 1948, 4) The Employees’ Provident Funds and Miscellaneous Provisions Act, 1952, 5) The Maternity Benefit Act, 1961, 6) The Payment of Gratuity Act, 1972, 7) The Unorganised Mines Labour Welfare Fund Act, 1946, 8) The Limestone and Dolomite Mines Labour Welfare Fund Act, 1972, 9) The Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare (Cess) Act, 1976, 10) The Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Fund Act, 1976, 11) The Beedi Workers Welfare Cess Act, 1976, 12) The Beedi Workers Welfare Fund

²⁹ The Code on Wages aims to replace 4 existing laws: (i) the Payment of Wages Act, 1936, (ii) the Minimum Wages Act, 1949, (iii) the Payment of Bonus Act, 1965, and (iv) the Equal Remuneration Act, 1976.

Act, 1976, 13) The Cine Workers Welfare (Cess) Act, 1981, 14) The Cine Workers Welfare Fund Act, 1981, 15) The Building and Other Construction Workers Cess Act, 1996.

The Code on Industrial Relations seeks to replace/repeal (1) The Trade Union Act, 1926, 2) the Industrial Employment (Standing Order) Act, 1946, and 3) the Industrial Disputes Act, 1947.

Core questions that are of relevance to the current spate of labour law reforms have to be located in the context of mounting evidence of increasing inequality in India. A recent paper by Lucas Chancel and Thomas Piketty points out that the top 10% of the country's population cornered a two thirds share of all income gains made in the country between 1980 and 2016.³⁰ So it is legitimate to ask can the country's workers, the majority of whom are still mired in the persistent poverty, have the confidence that there is something in the law that grants them any special countervailing force against the inequalities in their relations with their employers? Do the new enactments of this century reflect this foundational object of labour law? What is the meaning of inclusion of sections who had hitherto remained untouched by the structures and institutions of labour law administration in new laws when the essential foundations of worker rights in relation to employers is simultaneously being attenuated by legislative and executive restructuring of labour law? How are the great masses of unorganized migrant workers in India who are still outside the net of labour laws to respond to such restructuring? And how and where are the issues of women migrant workers entering the buzzing field of 'labour law reforms' and related discourses? These are not theoretical questions of mere academic interest, but as we will show in this study, they are living representations of the experiences of migrant women workers in 21st century India.

At the core of the process of reducing all these laws into a set of codes is an administrative and top down approach to labour laws that effectively erases the experience of ground level unions and organisations representing various categories of workers. Unlike the senior government bureaucracy who move across different departments, and therefore are inclined towards consolidated simplicity of procedures for them to understand and function with ease, workers and their organisations have more specifically hands on, and more longstanding experience of their location within the legal architecture. For them, simplicity would mean

³⁰ Chancel, L & Thomas Piketty (2017), 'Indian income inequality, 1922-2014: From British Raj to Billionaire Raj?'

addressal of their specific issues and conditions, rather than a generalist one size fits all frameworks. Is it complicated? Yes, of course it is, and does indeed lead to multiplicity of Laws? Indeed yes. But if underlying principles are common, we would argue that sector specific laws are more easily understood in their application for workers and administrators.

Merely putting them together in codes does not ensure simplicity, but rather adds to the unspecified grey areas that befuddle workers and administrators alike. In our view, the process of reducing the laws to a few codes effaces the variability of the historical processes through which various contingents of workers were able to organise and make demands on their employers, law and the state. Secondly, as discussed before, experience has shown that labour laws are ineffective unless they address the specific nature of labour processes and employment relations/structures that characterise various industries/sectors. The notion that one set of codes can address all contingents of workers is thus fundamentally flawed.

In the meantime, outside the legislative process, other changes are being made by amending the rules of individual labour laws through Government Orders and Notifications. Most recently, the Central Rules of the Industrial Employment (Standing Order) Act, 1946 were so amended, to allow employers to hire workers on fixed term contracts and remove any pressures on employers to renew such contracts. Fixed term employment was first notified for Apparel Manufacturing in February 2017, and then extended to all establishments in March, 2018.³¹ Such contracts had of course already been introduced by most private service sector firms and contractualization of major parts of the workforce in large and small scale manufacturing industries have indeed become a norm. Nevertheless, the recent notification will mean that the remnants of security of service that allowed hundreds of thousands of workers some freedoms and ability to resist oppressive conditions of work, albeit mainly in organized and formal sector employment, will no longer stand.

Implications for Migrant workers

The implications of these changes for migrant women workers, who have rarely enjoyed any legal rights, may not be immediately obvious. However, when related to the experience of fixed term contracts that have already been used for certain categories of migrant women workers, and when seen alongside changes made to the Apprenticeship law in 2016, the

³¹ Announced by the Finance Minister Arun Jaitley while presenting the budget for 2018-19, the amended rules were notified by the Ministry of Labour on 16th March, 2018

implications become more apparent. Let us take as an example the practice of textile and apparel firms in Tamil Nadu recruiting young and adolescent female migrants from rural areas under the so-called 'Sumangali Scheme' or 'Marriage Assistance Scheme' (read dowry), sometimes referred to as the 'Camp Coolie system'. When such schemes were challenged in courts by workers and their representatives, what was asked for was abolition of the schemes and regularization of the workers with minimum wages and better conditions of service. A quick examination of the way practices followed under the Sumangali Scheme was addressed inside and outside the courts is particularly relevant for understanding some of the implications of the current thrust of labour policy for young migrant girls.

First, we will mention about the manner of recruitment and the nature of the contract that the mills in Tamil Nadu used. R. Vaigai, appointed amicus curie by the Madras High Court for a PIL regarding the Sumangali Scheme, refers to a typical recruitment advertisement. It called for *unmarried* girls of age 18-21, of height 5 ft and weight 45 kilos to work on contract basis for a 100% export unit on a stipend of Rs 50 per day, for a training period of 3 months followed by a 3 year contract, on completion of which they would be paid a sum of Rs. 32,000.³² In practice, a significant number of the girls so recruited were of course below 18.

Secondly, the practice was to designate workers as trainees. Thus, a typical service contract, which was to be signed by the girls' parents and explicitly assumed her agreement stipulated 1) that the girl would have no right to ask to continue the training after 3 years; 2) she would have to work in any allotted shift with no special facilities for a night shift; 3) in case of accident with machinery the trainee would be held responsible, not the management, 4) management was entitled to terminate her training without notice, enquiry or compensation; 5) she was liable to termination if absent on even one occasion without authorization; 6) for going to the toilet she would require a pass and if she took more than 10 minutes, she was liable to disciplinary action; 7) she is not entitled to employment because she has been given training; 8) she is permitted to visit her home once in 6 months only, with no ex-gratia for leave, and parents can visit the child once a month; 9) a minimum of 28 days of work would be considered as one month; 10) she is only entitled to a stipend without DA or any other allowance; 11) she is prohibited from becoming a member of a trade union; 12) She would be

³² It was a Public Interest Writ Petition filed by a trade union in the Madras High Court in 2007 for which R. Vaigai was appointed amicus curie.

given Rs 25,000 only when she completes training at the end of 3 years as ex-gratia payment, and this decision of the management is final, binding and accepted by her.³³

Thirdly, the restrictions imposed on the movement of girls by the mills were given in the name of protecting their character. Since girls from rural and marginalized communities caught in a daily struggle to survive, had been particularly targeted for recruitment a network of brokers/middlemen, the compulsions that drew them into accepting such oppressive contracts are obvious. Given the several conditions and restraints listed in the contract, it should be obvious that the fact that the girls could have contact with their families does not take away from the bonded nature of their employment.

Several strands of opposition to the coercive and onerous terms evident in these contracts came to a head in 2007. That year, the Madras High Court directed that surprise inspections be carried out and appropriate recommendations made for regularisation and payment of a regular wage. The Tamil Nadu State Government accepted the recommendations of the Chief Inspector of Factories, for regularization and legalization of the appointments of the girls working under such schemes by Certification of the Standing Orders. Minimum Wages with DA for the workers under such schemes were notified. The state government constituted several District Monitoring Committees tasked with identifying mills where young girls were working as apprentices, to examine their conditions, and provide plans to prevent their exploitation. Reports and recommendations came from 8 districts. Despite variations in the observations of these committees, all of them recommended that the apprenticeship period should be reduced, the hostel conditions needed to be improved, and barring one all recommended regularization of services of the girls with minimum wages and other benefits of labour laws.³⁴

Even as a petition by the Tamil Nadu Spinning Mills Association challenging the Tamil Nadu State Government's Minimum Wage Notification on the grounds that apprentices are not entitled to minimum wages was dismissed by the Madras High Court in 2009, which again in 2016 directed the State Government to follow up on the recommendations of the reports of

³³ R. Vaigai, Advocate, Madras High Court, 'Girl Workers in 'Sumangali Scheme' of Textile Industry, Tamil Nadu – Claiming Equality through litigation' paper presented in workshop on Labour Law and the Migrant Worker, March, 2016, (mimeo)

³⁴ The districts were Theni, Sivagangai, Erode, Tuticorin, Dharmapuri, Salem, Dindigul and Namakkal. The observations and recommendations of the Committees are summarized in SOCO Trust, op.cit.

the monitoring committees, now, following the amendment to the Standing Order Rules, the small amount of momentum that had been gained towards regularization of the so-called apprentices has been subverted by the acceptance of fixed term employment in the Standing Order rules. Apart from this most recent rollback, the apprenticeship law [as amended in 2014] has a) set the minimum age of 14 for apprenticeship in trades related to non-hazardous industries (where apparel and textiles are not included), b) permitted employers to engage apprentices from other states, c) removed imprisonment as a punishment for employer violations, d) permitted employers to determine the hours of work of apprentices.³⁵ The net result is that the extra-exploitative and coercive conditions of these schemes and practices that were earlier subject to challenge under labour laws, have been virtually given full legal sanction, and employers have been given the go ahead to also bring in inter-state migrant girls. Already, there are reports that since girls from Tamil Nadu are now less willing to accept the harsh conditions of work; migrants are being brought in from other states such as Odisha and Jharkhand.³⁶

Turning to other categories of migrant workers for whom the Inter-State Migrant Workmen's Act (ISMWA) has so far been applicable, it may be mentioned here that the stipulation that migrant workers' wage should not be less than non-migrants in the destination state has not been included in the Code on Wages that has been tabled in Parliament. Nor is there any such provision included in the section for inter-state migrants in the draft Code on occupational safety, health and working conditions prepared by the Ministry of Labour and placed in the public domain in March, 2018, and under which the ISMWA is sought to be repealed. Consolidation of labour laws is being done in the name of rationalisation and inclusion of unorganised workers, but is seen by many and particularly workers' organisations as a rolling back of hard won gains made in the sphere of labour rights at various levels.³⁷

³⁵ The duration of apprenticeship is from a minimum of six months to a maximum of three years. Onsite inspection for apprenticeship has been done away with and self-certification by employers is all that is required. The apprenticeship schemes with government subsidies provided for stipends (read wage subsidies) also now include several service sector industries. See Rohit Nandan, 'Apprenticeship - the most power vehicle for Skill India' Press Information Bureau, Special Service and Features, 12-August-2016 15:46 IST,

³⁶ Personal communication by a consultant for spinning mills in Coimbatore in January, 2018.

³⁷ See Ramapriya Gopalakrishnan, Handbook on Labour Law Reforms in India, ILO/ACTRAV, 2015.

Women Workers and the new Labour Codes: Some Observations

The Code on Wages that has been introduced in parliament in 2017, takes from the Equal Remuneration Act (ERA) of 1976 to assert equal pay for work of same or similar nature and general prohibition of discrimination of grounds of gender. It however, crucially does not include the clause that earlier specifically prohibited such discrimination in recruitment. In other words, the process of consolidation has led to the dropping of an important anti-discriminatory measure.

Further, the Code makes it compulsory for inspection to follow the web based inspection schedule so that employers have enough notice and time to conceal any discriminatory malpractice. Inspectors are renamed as facilitators whose function obviously is now to be geared towards facilitating ease of doing business for employers, rather than safeguarding the rights of workers.³⁸ In practice, the administration of labour laws has taken a turn towards greater reliance on self-certification of employers and less on inspections to ensure compliance with the law. The restrictions on inspections are now being conferred a legal status in the Wage Code.

Despite grandiose claims that the Code applies to one and all, its definition of employee, worker, and employer are linked to establishments, which are defined as places where industry, trade, business, manufacture or occupation is carried on. It does not mention private households, and so implies exclusion of domestic workers. Nor does it mention home-workers or outsourcing. Under the old laws, at least the predominantly female home workers in the beedi industry were covered by minimum wage schedules and the option of including domestic workers in minimum wage schedules existed. Unless the definition of employee/worker is broadened to include domestic workers and home workers, the Code on Wages will effectively exclude them from any entitlements to minimum wage and the regulation of payments, and deny them some of the rights that these workers had been able to achieve from the pre-existing architecture of labour laws in India.

³⁸ As a sign of the changing purpose of labour law enforcement, is renaming of important functions of the various labour departments. For example the labour law enforcement machinery in Jharkhand is now called Comprehensive Labour Management System for Factory / Establishment / Worker Registration / Inspection / Management & Grievance Redressal

Finally, while there is a provision for an advisory committee with one third women (reduced from the 50 per cent quota under the ERA), in the other committees and sub-committees for conducting enquiries and working out/recommending minimum wage rates, there is no provision for women's representation. In consequence and as mentioned before, while some provisions against discrimination against women by employers have been removed, what needs to be also taken into account is that nothing more that has been added for women. As such, women workers might reasonably infer that they are net losers in the amalgamation of labour laws into Codes.

An examination of these two drafts Draft Codes on Social Security and on Occupational Safety, Health and Working Conditions that were released by the Govt in March 2018 revealed that while domestic workers and homebased workers are included in the draft on social security, they are again left out of the one that crucially deals with working conditions.

Since the Code on Social Security conceives of an administrative structure and schemes that are more in line with general welfare schemes for the poor and destitute that have a long history of being below subsistence level, it is quite clear that the architecture that is now being put in place will tend towards reducing the existing benefits that sections of workers have achieved over the years to similar levels, without improving other workers' situation.

Significantly, prevention and protection from sexual harassment finds no mention in any of the codes. Clearly, the Govt. does not see sexual harassment in the workplace as an issue of occupational safety, health or working conditions for women workers.

Interestingly, even under the **Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act)** enforcement authorities did not include anyone from the labour law enforcement machinery. The District officer charged with enforcement in POSH is the district magistrate or additional district magistrate or deputy collector. While the constitution of the local complaints committee has to provide for women members, it makes no provision for inclusion of any labour officer (if a female labour officer had indeed been included, it would have helped increase the presence of more women in the labour law enforcement systems). The tendency to separate women's workplace issues and rights from the labour rights and labour laws framework is thus seen in the case of domestic workers (discussed earlier) as well as sexual harassment. We would argue that such a process is likely to create divisions and fissures in workers' unity at a broader level that would not be in the interests of women workers. A corollary to such segregation is that the labour law

enforcement machinery is not going to be made more gender sensitive, to the detriment of the equality agenda in labour law.

In the midst of this situation of confusing flux in relation to labour laws, a welcome intervention came in the form of extension of maternity leave from the 12 weeks stipulated in the 1961 Maternity Benefit Act to 26 weeks under **The Maternity Benefit (Amendment) Act, 2017**. Of course 26 weeks of maternity leave would apply mainly to organized sector establishments and the amendment specifies that it is applicable only up to two children (not two pregnancies). So in case a woman worker already has two children, she would not be entitled to the enhanced 26 weeks of leave.

In the case of unorganized workers, maternity benefit remains in the form of cash assistance under the Janani Suraksha Yojana (JSY), which promotes child birth in an institution by providing financial assistance and social support by health workers for women below poverty line (BPL). JSY provides cash assistance of Rs 700 or 1400 (700 for high performing states and 1400 for low performing states)³⁹ JSY was a pre-existing programme (from 2005) and was merely enlisted later as a scheme under the Unorganised Workers Social Security Act, 2008. In actuality, JSY applies to pregnant women as defined by their belonging to BPL households rather than as women workers.

The 2017 amendment to the Maternity Benefit Act did not propose any enhancement of the pitiful amount that is offered under JSY. Logically, an enhancement in paid maternity leave in the organized sector should have been matched by a similar enhancement of the cash transfer for maternity for women outside the organized sector. It was not done, so despite the new amendment, the majority of women workers have not benefited.

In concluding our review of existing laws, discussion on the elements that are in the process of change, as well as a critical perspective on the rhetoric of such change, a question that needs to be asked is how all these methodologies of changing labour laws will be perceived by women workers and workers' organisations in the coming period. To our minds, the flattening out of historically evolved provisions in labour laws, with their socially grounded specificities and variations, through consolidation within a more simplified frame would indeed lead to erosion of benefits that have been gained by some sections of workers without

³⁹ Low performing states include Uttar Pradesh, Uttarakhand, Bihar, Jharkhand, Madhya Pradesh, Chhattisgarh, Assam, Rajasthan, Odisha, and Jammu and Kashmir

adding to the benefits of others. For women workers there are further concerns as to the way they are being detached from the broader movements of workers. In a period that has seen a significant emergence of women workers in trade unions and workers' movements across the country, the implications of segregating women's workplace laws from labour law is a question that women workers and trade unions have yet to come to grips with.

Chapter II

The Women Who Run Our Cities: Field studies from Jharkhand

Studies suggest that women migrant workers are predominantly engaged in four different kinds of occupations, namely, agriculture (17.5 per cent), paid domestic work (15.9 per cent), brick-making (11.8 per cent), and construction (14.3 per cent) [CWDS, 2012]. A large section of the migrants for construction in which women are predominant are mainly from the tribal belt on the Gujarat, Madhya Pradesh, and Rajasthan borders. They migrate to various parts of Gujarat, and other parts of all the three states (Mazumdar 2014). These are rural tribal communities whose agriculture has become precarious and untenable over the past generations because of land fragmentation and deforestation, but they have sought supplementary sources of income to meet subsistence needs of the family and to feed the moneylenders (Hardiman 1996; cf. Mosse et al. 2005). According to a survey of 42 bhil villages in central western India in the latter half of the 1990s, it was estimated that 65 percent of the households involved in seasonal migration went for casual urban construction work. This became the primary source of cash for bhil families, contributing to 86 percent of their cash income (Mosse et al. 2005). Construction industry in India is the largest employer of unorganized labour next to agriculture. Construction workers are the backbone of the economy as they create the infrastructure necessary for industrial growth. Among workers, women are mostly employed as unskilled labourers (GoI 2008a).

On the other hand, among brick kiln workers, women constitute a higher proportion as well as a wider set of labour catchment areas can be found in almost every state. However, mass migration of tribals for brick kiln work has been observed in Western Orissa, from where they migrate to the southern states of Andhra Pradesh, Karnataka, and other parts of Orissa (Agnihotri and Mazumdar 2010). Similar large scale migration takes place from several districts in Jharkhand to the brick kilns of Bihar, West Bengal and Uttar Pradesh. It is assumed that catchment areas the only economically backward and arid regions. However, it is to be noted that the green revolution belt of western Uttar Pradesh is one of the largest suppliers of workers to the kilns of Punjab, Haryana, and other parts of Uttar Pradesh. Various factors are responsible for forcing workers to migrate out of their villages in search

of better livelihoods. Unequal regional development, inequities within the villages, loss of artisanal occupations, lack of employment opportunities have condemned a large proportion of the population particularly dalits to conditions of abject poverty. This in turn makes them amenable to migration year after year to the brick kilns (Agnihotri & Mazumdar, 2009).

There is a similar pattern between construction work and brick kiln work, that they are seasonal in nature. The kilns operate for around eight months in a year, from October/November to June, and migrants in the construction sector also follow a seasonal pattern returning to their native lands in the rainy season (Mazumdar 2014). It is since the 1990s that both brick kiln and construction have expanded as a part of the real estate boom. While brick-making has remained an unorganized industry, construction work though largely unorganized, has seen a rapid growth of the organized and corporatized segment on the capital side. The workforce in the construction sector is, however, casualized in nature (ibid.). Recruitment of workers to the brick kilns and construction sites are by labour contractors, although some advance money is paid to the workers in the villages well before the season begins. It is interesting to note that workers in both these sectors follow a circular pattern of migration because their work is mainly seasonal in nature. Even when paid in full, migrants' wages fall well below the legal minimum often for piece-rate work. Payment is often delayed or withheld, particularly towards the end of season when the power equation favours the employer rather than the employee, and when migrants are under pressure to return home for the cultivation season (Mosse et al. 2002). The non-payment or under-payment of wages is a regular phenomenon. Moreover, being a part of the informal economy, migrants have no power to redress (ibid.). Such situations tremendously affect women migrant workers. They are frequently trapped in the vicious cycle of long hours of work with very low incomes, precarious working conditions, and physical and sexual aggression (Krishnaraj 2005).

India has witnessed large-scale migration of girls and young women from the tribal areas of Assam, West Bengal, Bihar, Chhattisgarh, Jharkhand, Madhya Pradesh and Orissa to urban cities like Delhi. These girls and young women migrate with other girls from the village through private recruiting agents and others organizations to be employed as 'maids' in urban households. With increasing migration of tribal girls to cities like Delhi, the trend of independent girls' migration to other cities is on the rise (Jagori 2010). This increase in the number of domestic workers is often viewed as 'feminization of labour' (Kanji and Menon-Sen 2001), although it should probably be referred to as feminisation of a few occupations. In case of domestic workers, feminization of labour is used both in terms of an increase in the

number of women domestic workers, and lack of any standard in working conditions for the migrant workers, added by the lack of organizing in the unions (Jagori 2010). It can be seen that household work has largely been taken over by women. However, the nature of work and workers has been rapidly changing. The sector primarily engages women domestic workers who are not recognized as workers while their work is undervalued or devalued completely. This is primarily due to the gendered notion of housework performed by women where even paid work in others homes is not regarded as work and therefore, economically undervalued. It is also undervalued because domestic work is primarily performed by poor migrant women belonging to lower castes (ibid.).

Large populations of domestic workers are migrants from socially and economically vulnerable communities, and are closely related to the increased rural-urban migration for work. The complexity of work organization, non-uniform wage rates, absence of defined work hours, incidence of violence and sexual harassment are concerns in the context of decent work. The illiteracy, low caste and migrant status of workers further intensify the issue (Neetha 2009; ISST, 2009). Lack of any labour welfare measures (such as health insurance, maternity protection, old age security, job security), and the absence of possibilities of alternative employment leave are major concerns.

There are no reliable estimates on domestic workers, with various estimates on domestic workers highly contested⁴⁰ - 4.75 million (Employment and unemployment NSS 61st round, 2004-05); 6.4 million (Census data 2001); and 90 million⁴¹. The variation between the estimates suggests the informality and invisibility that embrace the sector. Under reporting arising out its 'non-work' status largely on account of it being an extension of household work is the primary issue. (Neetha 2009). Estimates based on NSS data suggest that the number of female domestic workers showed a huge increase during the period 1999-00 and 2004-05. The increase has been more in urban areas though rural areas also show considerable expansion. During 2004-05, of the 4.75 million workers employed by private households, 3.05 million were in urban areas indicating the prominence of 'urban' in

⁴⁰ See Box 2.2 in Domestic workers across the world: Global and regional statistics and the extent of legal protection, ILO, 2012 for a detailed discussion on discrepancies between various sources on the estimates of domestic workers.

⁴¹ Estimate in Task Force Report, 2011.

domestic work⁴². However, the latest rounds of NSS employment unemployment data (2009-10 and 2011-12) shows a substantial increase in the number of domestic workers in rural areas also.

The Jharkhand Field Study

The tribal dominated state of Jharkhand, in central India, is a land rich in minerals and forest produce. However, falling agriculture incomes and growth of cities, has led to road crossings beaming with labourers. Amongst these, in a corner, one can spot women of various age groups. Clutching a small bag in their hands, they look expectantly at passers-by, in the hope of getting some daily-wage work. Our team approached women working as Domestic Workers, Brick Kiln Workers and Construction Workers (*rejas*). The term “reja” in Hindi literally means ‘a small piece of something big’ but, is often used to refer to labourers engaged in construction work. Our focus was on understanding the lives and livelihoods of women working in these areas - their struggles, aspirations and their interface with laws and policies (particularly those meant for them).

The study was carried out by conducting detailed in-depth interviews and focused group discussions (FGDs) with migrant women workers in the following sectors – construction work, brick kilns, and domestic work. 5 in-depth interviews and 1 FGD were conducted with workers in each sector. We conducted a total of 15 interviews and 3 FGDs. The interviews were focused on gathering individual stories of women covering their (i) area of *origin*, including their family background, marriage, occupational history, (ii) capturing their experiences of work, migration, wages, the law (labour law and general civil and criminal law), employment relations, and labour processes, (iii) sexual harassment, (iv) living conditions and (v) dreams and aspirations in life.

Construction

In-depth interviews and FGDs were conducted with a group of 12 women construction labourers in Ranchi.

⁴² Part of this increase may have been due to more careful enumeration with greater sensitivity to women’s work and recognition of this category of workers. Though, there has been no change in the survey methodology during this period, the category ‘others’ within the broad category of ‘community and personal services’ of which domestic work is one category show a decline. However, this cannot fully explain this increase, which is also documented in many micro studies.

	NAME	AGE	SOURCE	EDUCATION
1	Balo Kujur	40	Jamgain, Namkom	Illiterate
2	Manisha Oraon	30	Gumla	illiterate
3	Sonata Devi	34	Jamgain, Namkom	illiterate
4	Suljhani Devi	33	Hulhundu, Hatia	illiterate
5	Anita Topno	20	Lohardaga	12 th Standard
6	Bahrain Tigga	45	Ghutiya, Namkom	illiterate
7	Sangita	30	Dundigaraha, Namkom	illiterate
8	Neelam Bhagera	32	Obarya, Hatia	5th Standard
9	Savitri Devi	38	Dundigaraha, Namkom	illiterate
10	Ashrta Munda	30	Bermad, Khunti	10 th Standard
11	Sonali Toppo	35	Tupudana, Hatia	illiterate
12	Moti Bhagera	20	Khunti	illiterate

Brick Kilns

During our visit to the brick kiln sites in and around Ranchi, we found many women labourers hailing from Gore Karam Toli village, in Mandar Block. Hence, we decided to conduct a focused group discussion with the women from this village. We gathered a group of seven women, who were willing to discuss about their experience while working as a brick kiln labourers.

	NAME	AGE	SOURCE	EDUCATION
1	Alma Khalku	35	Gore Karam Toli, Manadar	5 th Standard
2	Sukko Orain	45	Gore Karam Toli, Manadar	illiterate
3	Sita Orain	52	Gore Karam Toli, Manadar	illiterate
4	Suko Orain	40	Gore Karam Toli, Manadar	illiterate
5	Pardoshia Orain	45	Gore Karam Toli, Manadar	illiterate
6	Mano Topno	40	Gore Karam Toli, Manadar	illiterate
7	Piyari Lohrain	42	Gore Karam Toli, Manadar, Ranchi	10 th Standard

From a legal perspective, India has slowly begun focusing on the labourers working in these informal sectors. A number of laws, with some specific for the construction industry, lay in place non-exploitative working conditions and provide for social security of labourers. Some of the major laws, in this regard are as follows:

- *The Minimum Wages Act (MWA), 1948* stipulates for minimum wages in scheduled occupations that includes “employment on the construction or maintenance of roads or in building operations”
- *The Equal Remuneration Act, 1976* provides for non-discrimination on the basis of gender in matters relating to recruitment and remuneration
- *The Contract Labour (Regulation and Abolition) Act (CLRA), 1970:* provides for conditions under which contract work is permissible, registration of contractors and employers, and regulation of working conditions
- *The Inter-state Migrant Workmen's Act (ISMWA), 1979* provides for regulation of conditions of recruitment, transportation and work, and provision of basic facilities by the contractors for inter-state migrant workers
- *Trade Union Act, 1926* provides for freedom of association and registration of trade unions.

- *The Building and Other Construction Workers Act (B&OCWA), 1996* provides for provision of basic facilities by builders, and minimum conditions of work in construction sites
- *The Building and Other Construction Workers Welfare Cess Act (B&OCWWCA), 1996:* provides for payment of cess by builders into a welfare fund, registration of construction workers, and welfare of benefits to registered construction workers

Domestic Workers

The third sector that was explored during the study was domestic work.

The key findings which emerge from the interviews and FGDs along with our theoretical understanding of how gender, migration, informal working conditions, labour laws and welfare policies work to affect the lives and livelihoods of migrant women workers can be broadly divided into the following 6 categories:

- I. Wages, conditions of work and labour process
- II. Sexual Harassment at work place
- III. Living Conditions
- IV. Cause and Effect of Migration
- V. Legal and Institutional Support
- VI. Dreams and Aspirations of workers

The following sections will deal with the analysis of each sector of work. The first section will deal with construction work and brick kiln work, followed by domestic work.

Construction Work and Brick Kiln Work

(I) Wages, conditions of work and labour process

Wages

Expectations of higher wage rates, better livelihood opportunities and improvement in life chances and well-being were the push factors that were responsible for large-scale migration of women and men for construction and brick kiln work outside their native villages. However, reality suggests that reality did not live up to expectations. Field data showed that there was opacity in the determination of wages in both these sectors. While the women workers were aware of the market wage rate in both these sectors of the economy, they were

not well-informed about how and why wages were determined in this manner. They simply took what was offered to them by the labour contractors and the owners without questioning the basis for such a determination of wages. While migration is supposed to have an empowering impact on women in terms of increased participation in the labour force, economic independence, and improved self-confidence, data shows that women migrants are still vulnerable to gender-based discrimination in the labour market. It has been found that since both these sectors were a part of the ever-expanding informal economy, the least skilled or rather unskilled jobs were reserved for women.

In the construction sector, it is the middleman known as the contractor or the *Munshi* who plays an important role in mediating employment and determining wages and conditions of work. Field data revealed that the daily wage rate in the construction site was determined in a particular manner between the labourer and whoever was engaging them at the construction sites - Masons, contractors, construction managers, or home owners. The discussion was only about payment of wages in cash; there was no discussion about other important things like accommodation, refreshments, food at the work site etc. Women mostly got the wage that was agreed upon at the time of recruitment. However, at times there was a cut in the wage and they got paid less than what was promised to them. Under such circumstances, women did not go back to their work sites from the next day. They again reached the labour chowk or chauraha at 8:00 in the morning, seeking work with someone else. Construction labourers Sangita and Suljhani Devi informed that most of the work came through masons. The mason acted as a middleman in getting them work. While, the women labourers were told that they will be paid Rs.300 per day, in reality, the masons took Rs.350 for each woman labourer from the construction site owner. So, the mason pocketed Rs.50 as commission. The masons ensured that the construction site owner paid the wage to them, and then they in turn paid off the labourers. Hence, the women labourers had no direct payment access to the construction site owners. Even after this commission cut of the mason, the women labourers preferred working with a mason, as it ensured them regular work. It was also found that in most cases, the contractor or the middleman was known to the workers and hailed from the same source area. Srivastava and Sutradhar (2016) argued that the recruitment of labour by *jamadar*/contractor was favourable for poorer migrants, even though they compromised with their freedom of being able to make individual contracts with their employers. Such a system gave the labourers the relative comfort of securing advances, and promises of secured employment from the contractors.

Women labourers mostly work on daily wage. However, at times, they do get work on contract basis where they get paid by piece-rate. According to piece-rate work, the workers get paid Rs.1500-1600 for carrying 2500 bricks. However, the final payment falls short by Rs.100-200. The rate goes upto Rs.2000, if they have to carry the bricks upto the fourth or fifth floor, and it requires 4 to 5 women labourers to finish the task. While in daily wage women get only Rs.300, under piece-rate work, each woman ends up earning Rs.300-400 per head. In piece rated tasks, the duration of work was generally implicit in the job specification. Such tasks required intensive work in specified shorter period of time for which the quality of work can be determined by the eye (Ramachandran 1990).

From a study of the interviews, we can see a consistent pattern of the wage rate being higher for the men, or the men getting higher out of a piece-rate because of the favourable mechanics of carrying out the same work. So, women in construction work complained of the daily wage rate only being Rs.300 for them, while the men were being paid Rs.400. Anita Toppo, a construction worker complained that women were paid only Rs.300 even after being assigned the most physically excruciating task, while men do the technical task that aren't as physically demanding. She laments that while women are made to work harder at the site; their work isn't respected and economically valued as those of male labourers. Same is the condition of workers in the brick kilns.

Amla Khalku, a brick kiln worker clarified that all brick kiln workers were paid piece-wise. The unbaked bricks were carried and kept inside the brick kilns. For carrying 10 unbaked bricks, the unbaked bricks accountant (*Munshi*) gave the labourers one token (*kodi*), which was equivalent to Rs.1.70, if they were being paid Rs.170 for 1000 bricks. In a day, women labourers collected anywhere between 100 to 150 tokens. However, to this there was some disagreement in the group, since others saw the range more between 80 to 130 tokens. At the end of 7 days, the tokens were accounted for and noted in the register by the Manager, against the name of the labourer. Similarly, baked bricks were collected from inside the brick kilns and carried outside. The baked bricks accountant gave one *kodi* for carrying 10 bricks, which was equivalent to Rs.1.20 to Rs.1.30 depending on the piece-rate. Through this hard work, a women labourer was able to carry anywhere between 2000 to 2500 bricks, and made somewhere between Rs.200 to 250 in a day by carrying baked bricks. In carrying unbaked bricks, a woman labourer managed to carry 1200 to 1500 bricks and earned between 180 to 220. Since the unbaked bricks were heavier and had to be carried a longer distance of 100 to

250 meters, women found it heavy on their bodies. On the other hand, baked bricks had to be only carried to a distance of 50 metres. Hence, it was relatively easier and physically less burdensome for women workers. Every female labourer was given Rs.500 to 700 cash per week for food. The whole season's calculation was done at the end of the season. The *Dadan*, and the weekly food allowance, was adjusted against the total earnings of the labourer.

Conditions of work and labour processes

Through the field survey it was found that most of the women construction labourers tried to find work as daily wage labourers in homes or buildings under construction in Ranchi. Women from the neighbouring areas of Ranchi also come, rent out rooms in the slums and looked for work with their fellow workers. A lot of these women took autos, tempos early in the morning to the labour chauraha (crossing) in Hatia in pursuit of work. They arrived there early in the morning at 8:00. Women knew that it was at these labour chowks that they would be sought for work. Daily, women were sought for construction labour work from the Hatia Chowk by masons, contractors, construction managers and home owners for places as far as 4-5 kilometers. They were first told about the nature of work and the daily wage rate. Once there was agreement upon the wage from both sides, they were taken to the work sites. They were taken in private vehicles, autos, motorcycles or were made to walk to the work site. The person who engaged them for work, paid for the commute to the site. However, most of the times, the women had to pay from their own pockets for their trip back home or to their rented rooms.

In studies of contemporary seasonal migration, middlemen or brokers have been found to be important in the fixing of wages, working conditions, and living accommodation. Individual men and women act as gang leaders or sardars (Rogaly et. al 2001). In our study it was found that brick kiln managers first looked for a male (Sardar) and a female (Sardarin) middleman. The wage rate, duration of work, commission for procurement, and other modalities including housing, weekly food allowance (*hapta*), payment mechanism, travel, drinking water facility, washing and cleaning facilities, etc are sorted out between the brick kiln manager and the Sardar or the Sardarin. Subsequently, the Sardar and the Sardarin approach the labourers in their villages, lay down the terms of the agreement as decided with the brick kiln manager, and ask the people to express their willingness. The financial advance called *dadan* is also decided at that time. *Dadan* is one of the most important inducements because labourers need some money as advance to hand over to their old parents and kids to take care

of themselves when they are away at work. All this is decided upon and communicated verbally; nothing is there in writing.

From the interviews it was found that women workers were happy that now there was a brick kiln site in their own village. Piyari Lohar, a brick kiln worker was a classic example of such an expression of happiness. She was of the view that this has brought relief to women workers as now they would not have to travel to far off places to find work. Field data revealed that 50-60 women workers have found work in this site itself. The flipside was that, with the brick kiln situated right in their village, they were finding it difficult to save money. The payment was done weekly, and all the money earned was spent on the day-to-day expenses of the household. Earlier, when the work sites were situated in far off villages, the workers were able to save judiciously and bring back the money when they returned home.

While there was disparity in the daily wage rate between women and men in construction work, both men and women were paid at the same rate in the brick kilns. However, it was in piece-rate work that the disparity in wages could be revealed. Besides wages, there was also a difference in the ways men and women carried out their tasks. It was interesting to note that while men carried the bricks on their bicycles, women carried the bricks on their heads breaking their bodies. As a result, men were able to carry more bricks and to longer distance as opposed to the women workers. The men carried as much as 30 bricks in one go on their bicycles, while the women were able to carry only 10 bricks on their head, and ended up earning twice the amount earned by women labourers. Pardoshia Oraon felt that women should also be provided with bicycles, so that they can earn the same as the men workers.

While there is disparity in the wage rate, one striking feature between brick kiln and construction work is that both are equally physically exhaustive for men and women workers alike. Once work is allocated to them by the supervisors, both men and women are expected to carry out the work without making any compromise. Women proudly said, "*Kaam mein aurat aur mard; labour mein koi bhed-bhav nahi hota*" (Both men and women are equal when it comes to work). When women find it difficult to carry out a task, they are taunted by fellow male workers due to their inability to carry out men's work. The work carried out by women labourers was physically demanding. It broke down their bodies, and made them vulnerable to many bodily ailments. However, that did not stop the contractors, masons, owners, and domestic employers from taking undue advantage of their vulnerability of being women migrants and uneducated, and denying them their due wage post work. It was here that many

women fought back when they were being cheated by their contractors and not paid full wage. Most of the time they ended up losing the battles.

The women interviewed were both unaware of the concept of equal pay for equal work, and were also unaware of the legal protection in this regard. While they thought it was unfair to be paid less than men for the same work, they didn't challenge the disparity. They accepted it as a social norm – of men getting the better share in a man's world. While we present the women's perceptions to the difference in pay, further studies should explore the reactions of men as well as employers (contractors, supervisors, mason etc.) in this regard. Also, there is a need to understand the actual quantum of work done by the different genders, their economic contributions at the work place, whether the contributions actually differ, the reasons behind this difference (if indeed, there were differences), and therefore whether the difference in pay is indeed justified.

(II) Sexual Harassment at Workplace

Sexual harassment or sexual abuse of women workers at workplace was a common phenomenon in both the sectors. Bhatt (2009) argues that the situation of women migrants is often miserable and hazardous, because they are vulnerable to sexual exploitation and violence, in addition to all other problems. In most situations, cases of women and young girls facing physical and sexual violence go unreported as the local police do not feel the need to register their cases because they are poor migrants from other areas (Ghosh 2005). This was also felt in the context of the construction workers and brick kiln workers during the study. Many women who were interviewed reported cases of sexual violence and sexual abuse in the hands of their employers and co-workers in the work sites. While some women spoke of direct sexual aggression by men, many others mentioned that sexually coloured remarks or the peculiar ways in which men addressed them made them feel uncomfortable. There were instances of men addressing the women workers as '*bhabi*' (sister-in-law) with a sexual undertone. Women workers informed that often the contractors, masons and even some male labourers turned up drunk at the sites. Young woman labourers, married or unmarried regularly faced verbal and physical sexual abuse, taunts, and physical advances at the work sites. The men told the women that they were their husbands during the day, and often cracked dirty jokes and passed lewd comments on them. The women felt violated with such behaviour, but also felt helpless at the same time.

Aashtria Mundai scoffs and says, “Some masons and young unmarried women fall in love during the course of their work. Behind all the sexual abuse, the practicalities of earning money play harder. Forced with the daily struggle of looking for work, many women settle with sexual advances in exchange of regular employment by the Masons.” This shows that the perception of women as property of men is so pervasive and deeply entrenched that masons and contractors make it clear to the women workers that they are their husbands during work. Instances like these showed that men asserted their entitlement over women’s bodies by exploiting their economic vulnerability and forcing sexual language and acts upon them. During the study, some women pointed out that masons and contractors did not make full payment to the women labourers unless they were ready to have sex with the men in order to get their hard-earned money. Sonali and some other women labourers complained that no women organization or labour union or government officials came to their rescue. Moreover, police authorities or non-governmental organization or men at the construction sites did not protect them against sexual harassment. These women were of the view that the women labourers should form a union, as it was impossible to fight the money power of the rich in the courts, at the police station to even to register a complaint.

Through the field survey it was found that there was consistent lack of knowledge of the laws protecting women against sexual harassment. Even when they complained, they got hostile or at best irresponsible behaviour from the police and government authorities. There were instances where the husbands of the women workers were themselves responsible for their wives facing sexual abuse in the hands of the contractors or employers. In this context, Manju Devi, a brick kiln worker narrated an incident of sexual abuse of a co-worker at the brick kiln site. Around 10 to 11 years back, when she was working at brick kiln site in Azamgarh in Western UP, a woman labourer’s husband got lured into gambling and drinking by the owner’s son and his friends. Caught in their money trap, they forced him to bring his wife to a farm house. There they repeatedly raped her, in front of her husband. This happened some four times. Unable to take it anymore, the affected woman opened up to her fellow women workers. They together approached the Manager for her to be released from work. They also pooled in money to send her back home. Since her husband was also a culprit, the police wasn’t informed. Manju stated that she and many others like her were unaware of the laws protecting women against sexual violence at workplace. She felt that women labourers were incapable of giving suggestions to stop sexual abuse at the brick kiln site. However, she added that it was the responsibility of the government to take steps in order to ensure that a

woman can respectably earn her living. The government should put a ban on the sale of alcohol and gambling to end this menace.

Moreover, it was found that the workers interviewed had also not received any support from civil society or non-governmental organizations. Being migrant, poor, mostly uneducated, unaware of their rights and lack of any support, left the women working in these sectors at the mercy of the men they worked for or with.

Pardosia, a brick kiln worker witnessed an incident, when a married male labourer started having sexual relationship with an unmarried female labourer. When the woman got pregnant, and her parents came to know, they had an ugly fight with the parents of the male labourer. The matter reached the brick kiln owner, through the Sardar. He first threw out the male labourers and his parents. Then he sent the girl to a doctor and got her pregnancy terminated. Peace was found in this way. Sita Oraon, another brick kiln worker noted that at one brick kiln the *Munshi* would give less work to the unmarried women workers and would give them more *Kodis* than what they had worked. In return, he would take sexual favours from them. This was a common practice at the construction site and brick kiln site. She also said that sometimes, the sons of brick kiln owners used the work site as the drinking place along with their friends. They even made sexual advances and raped the unmarried women labourers. She witnessed such incidents in Bardhaman in West Bengal. Many of these women want to fight against the injustice meted out to them, but they are in far off places and hardly know people whom they can trust. Instead of landing up in the hands of unknown people, they find the familiarity of faces at the brick kiln or construction site as a safer heaven. Hence, even when sexual advances or exploitation occur they protest, but try to take the middle path of reconciliation.

The worrying element is that none of the women, that were interviewed, has seen a single instance, where the guilty person has been put behind bars. Construction workers told us they had seen a mason, who raped and killed a Dalit girl, resume work in less than a month. So, the women see themselves as invisible beings, only to be seen when someone wants to use them for their personal gratification. On the other hand, their employers believe themselves to be invincible beings – never to be punished for sexual offences.

The frightening regularity, with which incidents of violence and exploitation occurred in these work sites, made the lives of women workers extremely difficult by not only restricting their freedom of movement, but also stifling their access to enabling conditions of both work

and leisure. Many women workers who were interviewed reported the grave oversight of women's safety on the part of the managers, employers and the owners. With more and more women stepping out of the private spheres to the public spheres under the capitalist system of production, the discussion of various forms of violence from the most explicit to the subtle has assumed key importance.

Hartmann (1976) argues that patriarchal relations in the labour market cannot be understood in terms of capitalism alone because patriarchy pre-dates the system of capitalism. Central to her understanding of gender relations is the job segregation by sex which she argues is the primary mechanism of maintaining superiority of men over women. She says, "Patriarchy far from being vanquished by capitalism, is still very virile; it shapes the form modern capitalism takes, just as the development of capitalism has transformed patriarchal institutions" (p. 139). Thus, it is this mutual accommodation between capitalism and patriarchy that has created the vicious circle of oppressing women (ibid). Violence is therefore implicated in the construction of both patriarchy and capitalism.

This experiences of women several questions regarding the role of government and non governmental institutions which are meant to protect women against sexual harassment, particularly at the workplace. How is it that the women are not aware of laws related to sexual offences? Why is it that they are not able to access the legal system to safeguard their rights? What is the role and reach of civil society and non governmental institutions here? To what extent have they managed to change the scenario regarding sexual harassment at these work sites?

(III) Living conditions

The spectre of inadequate income might force women to migrate to the cities, alone or with their husbands, but the high cost of city life coupled with their meagre incomes leave them trapped in a vicious cycle of poverty forcing them into inhuman living conditions. They live in slums, with no basic amenities, lack privacy and are disenfranchised from all sorts of social welfare entitlements. Although migration represents one of the most important methods of diversifying rural livelihoods, migrants are nevertheless often denied their most fundamental rights (Bhatt 2009).

All the workers we interviewed informed of the lack of the most basic amenities at the work sites. These workers claimed that their place of residence (whether slums in the cities or the

brick kilns where they worked) did not have any public toilet. This forced the women to answer nature's call before dawn, to ensure no one is prying upon them. All responsibility of household chores and taking care of the children fell upon women. They might very well work along with the husbands, as daily wage earners, but unlike men labouring from 9:00 am to 5:00 pm, the women started their day as early as 4:00 am, squeezing all home chores before they rushed to join the men in finding work at the *nakas*. Finally, the women workers rushed back from the work site post 5:00 pm, to cook and feed the family, before they finally called off the day at 10-11 pm. Work for women did not begin in the so called 'public workspace'. Instead, the domestic space itself, where women's work was deeply undermined and devalued, became the starting point of increasing tension between men and women and what was therefore differentiated as 'work' and 'leisure'. The double burden that these women workers carried all their lives not only made their lives difficult, but also created an atmosphere of fretfulness where there was mounting pressure on them to perform better both in the workspace and domestic space. Despite women's active engagement in the public workspace, their association with the domestic space as housewives and mothers was even more glorified. Mies (1981) argued that the social definition of women as housewives served mainly to obscure the true production relations and consolidate their exploitation both politically and ideologically.

Women from across various districts, and every corner of the state of Jharkhand came with their husbands to Ranchi in search of work. They settled down in the slums of Ranchi city, rented shanties made up of bricks and cement or asbestos steel sheets. The rent ranged somewhere between Rs.800 to Rs.1200. The shanties costing between Rs.800 to 1000 had one room, one kitchen but did not have toilets. Women had to go to the river side for relieving themselves, that too during the night. During the day, the police chased them away, if they went to the riverside to relieve themselves. Baths had to be taken in the open near the shanties. The shanties whose rent ranged between Rs.1000 to 1200 came with an attached toilet. Then again for a bath, the women had to come out in the open near the shanties. Such inadequate infrastructural facilities made women's lives very difficult in the cities.

Sonali, a construction labourer, informed us that being migrant workers, no one in the shanties had any ration card. Aadhar and voter ids also bore their village address. Most of the women didn't have any bank accounts. The shanties had electricity connection, the cost of which was charged by the landlord in the rent itself. They did not get any separate electricity bill from the landlord. There was no drainage. Hence, all water used for bathing in front of

the shanties got accumulated in ditches. This invited a lot of mosquitoes, who bit in the night. Drinking water was accessed through a hand-pump located 40-50 meters from the shanties. The workers assigned the task of fetching water to their kids. Women were also involved in fetching water for their households. When heading for work, most of the women handed over the keys to their kids and assigned them the task of cleaning the utensils. Some young married women with babies or no babies locked the shanties and took the keys with them to the work sites.

None of the women had gas stove for cooking food. Since they were migrants to Ranchi district, they were not able to avail gas stove under the Ujjawala Scheme. This left most of the women with no option but to use firewood and coal for cooking. Some labourers managed to procure gas stove through private agencies. The women lived with their husbands who were also labourers. Most of the couples spent money on their kids study in good private schools. They aspired that their kids shouldn't end up becoming labourers like them. Instead they should get respectable jobs or set up their own business. Some women pointed out that they were working as migrant labourers so that they could convert their mud huts back in the village into permanent and cemented homes.

Most of the women, who worked as labourers at the brick kiln sites, came from poor households. They lived in mud houses with thatched roofs. They did not have ration, aadhar and voter Ids. Some women had even opened up bank accounts. But, for getting all of this, they had to pay middle men. For instance for Aadhar, they had to spend Rs.50. For opening bank accounts, they had to pay upto Rs.500 to middleman. They had electricity in their homes and fetched drinking water from the hand pump which was 50 to 150 meters away from their huts. There were no drains near their huts. Only some labourers got gas connections under the Ujjawala scheme. Others came to know that their names were wrongly entered in the survey records. Some said that there was a mismatch in their and their husbands' name. Thus, they haven't been able to get a gas connection under the Ujjawala scheme. Everyone owns their own homes in the village. Nobody stays on rent.

None of the women interviewed were happy with the work of a brick kiln labourer or a construction worker. The amount of effort that was required in this work, did not translate into the money that they get out of it. But, it was only due to economic necessity that they were forced to do this hard work.

Jawani Oraon, a brick kiln worker broke down while talking about her living conditions. She had an Antodayan ration Card, Aadhar Card, which, she procured through the Ward Member, by paying him some Rs.50 for getting each of these. However, except her, everyone else including her in-laws had Voter Id cards from before. But, this is where any semblance of normalcy in her life ends. Her house was a thatched two room house. Water dripped down during rains. There was no electricity, water connection, toilet or drainage. For water, she had to depend on fetching it from a hand-pump at a 100 meters' distance. Her husband and her-in-laws were all drunkards, who were constantly berating or beating her for more money. She poured every penny that she earned into meeting the household expenses and educating her kids.

These narratives suggest that women are always at the receiving end of all household dynamics. It is important to understand and analyze the contribution that women make to household economy. Though poverty remains an overarching theme of this chapter, field narratives show the differing relationship that men and women have to poverty, and how women experience poverty differently than men even if belonging to the same household.

(IV) Cause and effect of migration

Although people usually migrate in the hope of improving their life chances and well-being, the process of migration is nonetheless characterised by impediments, susceptible not only to structural and even cultural constraints affecting the choices available to would-be migrants, but also to the emotional and psychological distress associated with it. Several factors and considerations shape the decision to migrate (Bhatt 2009: 87). A substantial portion of internal migration in India is 'distress-led'. Factors such as collapse in rural employment, the economic difficulties facing agriculture and the inadequate employment opportunities in the urban centres are responsible for large-scale internal migration (ibid.)

Piyari Loharain (42) and Sita Orain (52) told us that apart from agriculture related income, the livelihoods of most of the houses there and the neighbouring villages centered around the brick kilns. Some men undertook the dangerous task of baking the bricks in the big ovens, while a large part of them ended up being used as labourers for breaking the coals to fuel the ovens, preparing the bricks, carrying the unbaked and baked bricks, washing the bricks. While those men who were smartest in getting work out of others became Sardars (and their wives become Sardarins), who procured the labourers for the brick kiln owners.

Sita told us that most of the women from the village went for brick kiln work to sites at Varanasi, Dewaria, Gorakhpur, Chapra, Patna, Sevan, Jahanabad, States of Assam, Agartala, and Bardhaman in West Bengal. She further said, it depended on the Sardar-Sardarin who reached out to you and who you were willing to go with. The responsibility of transporting the labourers to the Brick kilns lay with the Sardar-Sardarins.

Bahrain Tigga told us that most of the women working as construction labourers came from Lahter, Ghumla, Khuti, Simdega, Lohardagah districts. The reasons for migration were three-fold. Primarily, shortage of farm incomes back home was why the women migrated to Ranchi and got involved in such hard labour and lived in these shanties. Secondly there was shortage of work in the villages, and thirdly, working in cities helped them to send their kids to better schools.

Field data suggests that the reasons for migration can be broadly clubbed under the following categories:

- a. Falling village income- Interviews with women workers reveal that while farm income was falling consistently, there were hardly any alternative source or mechanism to earn their livelihoods in the villages and sustain themselves. As a result, poor economic conditions pushed households into abject poverty. Farm labour incomes were also dwindling. This compelled women to migrate to other cities in order to earn their livelihoods. Dubhan Devi, a construction labourer said that finding no support from her in-laws' family, and in search of better school, her husband moved along with her and the kids to Ranchi. It was in Ranchi that she started working as a construction labourer. All her four kids were born in the village only. She suffered from Anemia, shortage of blood in her body, pre and post the birth of each of her kids. Her kids would also recurrently fall sick in the village. Besides, the income from farms was constantly falling. The income was inconsistent and was so less that they could only make through with 2 to 3 months with the paddy that their farms grew. Farm labour incomes were also dwindling. The shortage of income was leaving her and her kids with very less to eat, making anemia rampant in the house. Hence, she and her husband felt that they should move to the city for a better life. So, the couple came to Ranchi some 25 years back. They came straight to Ranchi and didn't go anywhere else.

- b. Seasonal migration: The amount of grains grown in the small landholdings of the villagers was insufficient to feed a family for more than 3-4 months. Hence, post the cultivation period, and with lack of other work in the villages, the man and woman of the house, found migrating to other areas/cities as the only recourse available. Both construction and brick kiln work were seasonal in nature. During the rains, workers moved back to their native villages with the money they had earned at their workplaces. Therefore, in seasonal migration outmigration was patterned by season.
- c. Schooling and Healthcare – Increasingly, the women are finding the education and healthcare levels in the village insufficient and unmatched to ones available in the city. To provide a better future for their kids, some are venturing to the cities.
- d. Following their husbands – Consistently, the married women ascribe the reason for migrating as to having followed their husbands. Interviews show that while some women moved together with their husbands to a different place in search of work, there were many women who followed their husbands after they had left and settled in the new place. Sutarmani, a construction labourer said that she followed her husband exactly after one year of his moving out of the village.

Being away from their lands had some debilitating effects on the lives of the women. Primary, amongst them is the issue of alienation. None of the women interviewed talked about finding the migrant city's culture a natural fit-in for them. Infact, there was utter lack of vibrancy in their lives out there. Confined to the shanties, living near dirt, and perceived as nothing more than people to be exploited, left these migrant workers incapable of integrating in the life of the city. Migration also brought with it *disentitlement* of the migrant workers, from many social welfare schemes. Since, the address on the ration cards, Aadhar, and other identity cards are of their home back in the village, the women aren't able to avail any benefits under social welfare schemes in the city.

Migration added to the vulnerability of the women labourers. In multiple instances, especially in the brick kiln sites, where the labourers stayed on sites in different states, the women on being sexually harassed found themselves to be alone in a far away land. The fear of exploitation by the police, if they came to know that the victim was a migrant worker, deterred many women from approaching the authorities. This left the victims at the mercy of

mediation by the site owners, who have an incentive to bury the incident for fear of attracting the attention of the authorities.

Even with these limitations, it's through migration that the labourers were being able to find work, which was otherwise not available in their lands back home. Besides, even if they were migrating, in some cases the children and in most of the cases, the old parents stayed back in the village. Hence, to fund their expenses, the labourers were repatriating their incomes back home. By doing this they were helping the village economy get infused with outside money.

(V) Legal and institutional support

The Indian state is the guardian of citizen rights and, in principle, offers protection to migrant construction workers through central and state legislation. In 2002 when planning for migrant support began 'there was an abundance of legal protection inter alia under the Minimum Wages Act (1948), the Inter-State Migrant Workmen (sic) Act (1979), the Contract Labour System (Regulation & Abolition Act) (1970), the Bonded Labour System (Abolition) Act (1975); and for women under the Equal Remuneration Act (1976), the Construction Workers Act (1996) or the Factories Act (which, for example, set a handling limit for women of 20kg), as well as through moves towards Indian ratification of the ILO's new convention on child labour. Moreover, the Trade Union Act (1926) and cooperative laws enshrined the right of labourers to organise. This legislation contained provisions relating not only to wages, but also health and safety (protective clothing, etc), insurance/compensation for accident and injury, and the right to shelter and childcare (at sites where more than 20 women work (Mosse et. Al 2005). Despite all the legislations in place, the real issue was not that of formal legal provisions, but of institutional access and representation. The government labour departments both centre and state, were not taking adequate responsibility for protecting workers' rights and resolving labour disputes (ibid.).

The study has found a lack of institutional support for women labourers both from a sectoral aspect and on any issue related to wage disparity, sexual harassment, living and working conditions of the workers, employment relations, labour process etc. On the sectoral aspect, neither of the construction or brick kiln women labourers received or were even aware that they could avail governmental institutional support whenever they were in need. The existence of a labour department was unheard of, let alone getting registration done with the department. Infact, the some of the women had very logical suggestion of labour department holding labour camps at the slums or the labour crossings where they congregated to find

work. For instance, Dubhan Devi, a construction labourer said that she was unaware of any legal or institutional mechanism of determining wage rate.

All of them had distrust and were fearful of the Police. Their experiences taught them that the police only used any case registered by them against their exploiters, as a means to earn money from the accused. *“Even after a mason had raped and slit the throat of a young tribal girl, twenty-twenty five days later he was back at the construction site”*, recalled a woman construction labourer with horror in one of the interviews.

Any understanding between say (i) the Brick Kiln owners, Sardar-Sardarins (the middlemen who hire the labourers) and the Brick kiln labourers, (ii) The Contractors-Masons and the labourers and (iii) the employer and the domestic worker, is on an oral understanding and nothing written anywhere. This made any scope of a dispute resulting from the work, only a play of one person’s word against the other. Hence, we didn’t come across anyone having taken up formal legal adjudication against their employers.

These being migrants, uneducated and seasonal workers, they even don’t have any association or union that could advocate on their behalf. In the absence of any unions, they lacked collective bargaining power, which made them vulnerable to wage disparity and even denial of payment for their work. Even in gross sexual harassment and abuse of denial of multiple days of wages, the women labourers had narrated stories of utter helplessness and failure. The migrant workers seem to be invisible even to non-governmental organisations and civil society groups. Worse, they are invisible even from any issue based activism. Rogaly et.al (2001) argued that people who migrate temporarily for manual work are not usually unionised and are often unprotected by effective legislation against travel and workplace risks. It’s as if the shanties of the construction labourers are as invisible as the tin-sheet rooms lined next to a brick kiln and the lonely help working in the household.

A widow, Pushpa’s life forced us to understand that we must look deeply into further understanding how the labour policies could be made more effective in benefitting hard working people like her. When her husband passed away, she was devastated not just about his loss but also for the forthcoming state of affairs she would have to face. She had not known that she could avail a family welfare benefit on the loss of the earning member of her family. Besides, she also had no clue what documents would help her avail the scheme. Not just the case of Pushpa, but to her surroundings, to her community and her groups, it is an alarming state as they are even not aware of the officials whom to reach for a first hand

guidance. This lack of knowledge costs Pushpa on an everyday basis, as there were around 18 schemes under the Building and other Construction Board that they can avail. However, sheer lack of knowledge, information about the persons/ representatives/ local electives or even the urban local body that they could reach is a matter of gap between system and beneficiaries at the other end.

Many like Pushpa can not only benefit from the schemes directly, once they are registered under the board, but could also ensure a standard education and living for their children from birth to their skill development. Pushpa and her surrounding were also unaware of labour unions that could ensure their rights are preserved and so for their families, but the lack of enthusiasm for further skill building and self employment was a challenge in the state.

In another incident, on being asked about availing any welfare schemes, Jawani, a migrant labourer, said that being illiterate, she was ignorant about them. However, along with her female co-worker, she did once go to the Government Labour Department in Doranda Tehsil to get their Labour Registration Card. But when they reached the office, they got intimidated by the grandeur of the building with beautiful tiles and green curtain draped office rooms. Fearing that they will get a scolding for approaching such educated officers and clerks, she and her friend came back without talking to anyone at the office. But, they did get an AICCTU (Union) registration card later through one AICCTU worker Alma Khala, after paying an amount of Rs. 50.

Narratives from the field show that most of the migrant workers not only lack awareness of their basic rights, but also any organization that can represent their interests. While part of the problem is the lack of proper implementation of the laws and the lack of diligence on the part of the labour officers, another part of the problem is the lack of self-interest of the vulnerable migrant labourers. While there were incidents when the authorities did not proactively respond to the labourers' complains, at other times the labourers themselves did not register complaints with the police in order to save their job and family honour. Moreover, since construction and brick kiln work was a part of the informal sector, the migrant workers were not organized under the banner of any union. As a result, it became difficult for the workers to bargain for their rights. The workers were highly dependent on their contractors and employers, and were reluctant to take up cases against them. For them, to complain or to organize was to forfeit employment.

(VI) *Dreams and aspirations of the workers*

All the women interviewed in the course of this study, were mostly illiterate and poor. Each of them dreamt of life different for their kids. Infact, this was the motivation that drove them to sustain with all load, abuse and pain in the work that they do. For improving conditions at work, the women hoped that the government ensured that they got their due wage, weren't sexually assaulted by men at work, got decent place to live and basic amenities like toilet facilities. For them this was good life so, they didn't demand anything beyond this.

Talking about dreams and aspirations Jawani said that she would take her life as satisfactory if her kids got good jobs. She was able to make a good small house and the government provided a hand-pump next to it. If only her husband gave up drinking, would she have mustered to dream bigger. *"In another life. Not this life!"* she says dryly. None of the women who were interviewed seemed happy with the life of a construction labourer or brick kiln worker. However, they felt they were left with no alternative but this. That is why they had to take recourse to this life of hardship. They wanted to work hard themselves so that their children could live a better life. They did not want their children to struggle like them. They wanted them to study hard and take up jobs in the formal sector unlike their parents.

Domestic Work

We organized a focused group discussion of women who work as domestic workers in cities and live in Gorkho Village of Mandar Block in Ranchi District. When the focus group discussion (FGD) began with the help of Mr. Ashok Kumar, a Block Coordinator of 'Child In Need Institution (CINI)' and a Peer Educator, Ms. Kamla Kujur, also from Gorkho village, the participants came up with mixed feelings for discussing about them working as Domestic workers. In this group discussion, the focus was to make the women collective reflect upon the working conditions, treatment by employers, the work-life situations faced by the women and their interface with law, and policy targeted towards protecting and helping domestic workers. The participants in the FGD, were initially apprehensive but, slowly opened up about their experiences and views in working in households as a domestic help.

Below is the list of the participants who took part in the FGD:

S.N	NAME	AGE	SOURCE	DESTINATION	EDUCATION	SECTOR
1	Mina Kerketta	25	Haril, Mandar	New Delhi	6 th Standard	Domestic
2	Sangita Ekka	30	Haril, Mandar	New Delhi	Illiterate	Domestic
3	Nirmala Bara	30	Gorkho, Mandar	New Delhi	3 rd Standard	Domestic
4	Koili Tigga	19	Gorkho, Mandar	New Delhi	Illiterate	Domestic
5	Rozlin Ekka	40	Gorkho, Mandar	New Delhi	8 th Standard	Domestic
6	Suchita Khaka	37	Gorkho, Mandar	New Delhi	9 th Standard	Domestic

Profile of the respondents

Mina Kerketta is an unmarried 25-year-old, with a family of two brothers and sisters and her parents to take care of. Her family members are involved in agriculture. *Sangita Ekka*, second down the list, has seven sisters and two brothers. All her sisters are married and work with their husbands as construction labourers or as brick kiln workers. Her elder brother is working in New Delhi as Construction Worker, while the younger one is studying. *Nirmala Bara*, the third participant recently lost her parents. She has a brother and two sisters. All of them including Nirmala are married.

She has two sons and a daughter. Two of her sons are studying in the village school in 9th and 6th standards. *Koili Tigga* is teenage girl, with three brothers and a sister but, her parents have passed away. Most of her family members are working in agriculture or in the Brick kilns. *Rozlin Ekka*, lives with her husband, two sons and a daughter. Her husband's deteriorating health forced her to leave New Delhi and move back to the village. *Suchita Ekka* lives with her small family consisting of a son and a daughter and her husband. Suchita also works as an *Asha* worker in the community.

(II) Geographical location of migrant domestic workers

All the 6 members who participated in FGD have migrated to New Delhi, Gurugram and in the NCR region, choosing it over the regular migrant destinations of Bihar, West Bengal, and Assam. Most of them went to New Delhi with their relatives who helped them find work as domestic workers. Suchita Khakha went with her uncle's elder daughter to South Extension

Part II of New Delhi, where she found a missionary organization which gave her shelter initially. The nuns in the missionary helped her to find a job by acting as mediators and also gave her training in learning to use sewing machine on Thursday and Saturday evenings. They also requested her employer to allow her to come to the Church every Sunday morning. *Mina* told of how she left for New Delhi based on a telephonic conversation and she was amused after seeing her future employer at the station.

But all of them rejected the offer of being hired as domestic workers by the private agencies. Instead they took up work through people familiar to them. Based on experiences of other women from their village, they knew that going through an agency would take away their freedom as they would be made to sign a contract. Some women who had signed such contracts told of being forced to work for longer hours in less pay. These obligations were very harsh, like working for a minimum time period or giving away their one month's salary if they left mid-way. Being uneducated, they found themselves incapable of understanding a written document and hence were subject to various kinds of exploitation.

For the purpose of analysis, this section is divided into the following categories:

(I) *Wages and conditions of work*

Field data showed that wage rate for domestic work lacked consistency. The same was driven by the class status of the locality; a posh locality generally paid higher wages to the workers. Infact, the initial engagement of domestic workers when they migrated were greatly undervalued, as the employers took advantage of the lack of their knowledge about the local market wage and the urgency of the new migrant to earn money. Domestic work was divided into two categories, live-in and live-out. Through the field survey it was found that most of the women workers interviewed worked as live-out⁴³ domestic helps. While some women would work in one house the whole day and leave in the evenings, there were others who worked in different households, moving from one to the other, and performing one or more tasks in each household. Palriwala and Neetha (2009) point out that this kind of work is characterised as 'live-out' from the perspective of the employer. For the domestic worker, the actual number of hours she spends in all the households, she works in is a full day's work.

⁴³ Women who work as live-out part-timers are primarily migrants who move to the city with their families or are female construction workers who enter domestic labour when no construction work is available. Some of them are also landless labourers who are displaced when rural areas are absorbed by cities. On moving to the city, they mainly reside in the difficult conditions of slum clusters (Jagori 2014).

Koili Tigga worked in a doctor's house in Panchasheel Park in New Delhi. But even though he was a doctor he wasn't a good human being. Though she was getting a decent salary of Rs.8000/- per month, her employer's lacked basic human ethics that everybody should have. Starting from 6 o'clock in the morning to 11 p.m. in the night, she would have to carry out extremely rigorous work. Even after finishing the household chores by 10-11pm, she had to devote personal time to her lady employer for massaging her foot. Every time the employers were in a bad mood they would abuse her. Unable to take all this anymore, she left that doctor's house. She is now working for a good family who is also helping her in meeting her basic needs.

Sangita Ekka left her tiny village of Haril and went to her sister's place in the big city of New Delhi. There she started working as a domestic help in different houses in Vasant Kunj. She has been working there for fifteen years now. She described her employer as a businessman and a good human being. When she started working in 2003, she was earning only Rs. 1900/- which has now increased up to 15000/- per month. She visited her sister's house every Saturday afternoon and returned back to Vasant Kunj by Monday morning. Though being a domestic worker involved a lot of work, she has got accustomed to the rigour. She wants to continue for ten more years in this industry and then pursue her dreams. She does not want to get married; rather she dreams of building a big house in her village, buying a motorcycle for herself and to start a business.

Nirmala Bara told us that her employer provided her Rs. 5000/- per month two years ago but, the sudden death of her husband left her heartbroken. Instead of showing her any sympathy, her employer became even more abusive and rude. She described them as '*khadoos*' (wretched), who left no stone unturned to make her life miserable. She thought of returning back to her village Gorkho, but she needed to earn for her two sons and daughter. Currently, she is working as a cook in a primary school where she prepares midday meal for the students. Sometimes she goes to Ashok Nagar in the evening and spends the entire night at a doctor's house as a nurse ('*Aya*' in local language), looking after the old parents of the doctor.

These instances suggest two very important aspects of domestic work: firstly, the inconsistency in the wage rate for domestic workers, and secondly the physically exhaustive work that the women workers were supposed to carry despite the low wage rate.

Concomitantly with the low wage rate, the women workers were forced to work for the entire stretch of the day. This left very little time for themselves. Micro level studies show that irrespective of the profile of workers and nature of domestic work, the employment and conditions of work in paid domestic work are highly informal with low wages. The details of work, the wage structure and service packages are very complex and variable, making it problematic to arrive at a uniform wage rate for domestic work even for a specific locality (Neetha, 2009). Wages and other conditions of work vary across region and even by locality in the same town/city. Apart from the variation across larger divisions (such as cook, cleaner, and baby-sitter), wage rates vary within categories depending on the nature of contract and other specificities of work and the worker. Further, personal relations are crucial in setting the terms of the contract – be it wages, leave or other entitlements.

The tasks performed by domestic workers included cleaning (sweeping, mopping and dusting), washing (clothes and dishes), or even putting machine-washed clothes on the clothesline or/and folding them, cooking, or preparation for cooking such as chopping vegetables and making dough, or cooking a part of meal, ironing, housekeeping and extensions of these outside the home such as shopping. Domestic work may also extend to childcare or care of the aged as the personal account of Nirmala Bara testifies. There are no standard norms that determine the working conditions of domestic workers. Wages are fixed by the employers, but the rate of the area in which they live also influences the determination of wages to a great extent. Moreover, wages also depend on the bargaining power of the domestic workers and the desperation for work. While those who have bargaining power can negotiate with their employers, others who are desperate for work agree to work at lower/whatever wages they are offered. The type and the nature of tasks that workers perform also influence decisions about wages. Cooking attracts more money than cleaning. That socio-economic profile of the workers is also instrumental in determining the wage rates. Since domestic work like construction and brick kiln work is a part of the informal sector, workers lack job security. There is no guarantee of employment as the employers can ask the workers to leave any moment without prior notice or financial compensation (Jagori 2004, Mehrotra 2008, Neetha 2008, Menon 2010).

Rozlin Ekka, a domestic worker, disclosed her heart-breaking story of how she had to spend two years in her employer's house in Chattarpur, New Delhi without proper food and sanitation. She had to carry out vigorous work for seventeen hours, but she would be given

only two breads with a cup of tea at 11 in the night. She was given no toilet or bathroom facility. She had to go outside for defecation. For taking bath she had to use neighbour's bathroom. No proper bedding was there for sleeping. She would be only given a small bowl of rice in the afternoon. Her life became of total distress and she decided to leave. She went to a nearby area for work but the situation did not improve. Finding herself short of money and feeling helpless, she returned back to the previous house, worked there for nineteen days. However, she couldn't take the torture anymore; she left the house and finally came back to Gorkho without getting the payment for those 19 days.

Thankfully, not all interviewed had to suffer like Rozlin. Few are enjoyed a decent life, like when Mina Kerketta of Haril Village shared her side of the work life. She was placed to work in the house of a Pilot of Air India. The pilot and his wife treated Mina as if she was their own daughter. They gave her a handsome salary of Rs.10000/- per month along with all the facilities like, three times food, toilet, bed etc. Mina told everyone that at times she went to the movie hall to watch movies with the couple. She was provided with new clothes throughout the year and the best part was that every time she went home she was provided with flight tickets by the employer. She admitted that they were just like God for her and that she could go to any extent to take care of them as per their requirements.

While experiences across were not the same, many women migrants who worked as domestic helps in different households were faced with a lot of hardships. The women were expected to work the whole day without proper remuneration. Moreover, weekly off or paid leave was the result of difficult negotiations with the employers. Due to the hectic work schedule followed by the absence of leisure, many women were forced to return back to their own village. Sushila Sanga, a domestic worker came back to her village after gaining enough experience as a domestic worker and Rs.30000 cash in hand. Workers invested the money they earned for building or renovating their houses in the villages.

(II) Social security benefits and living conditions

There are many women who have worked as domestic help for longer periods, but they are left with little or no savings at all. The low daily wages, against incremental living cost, but irregular means of income, left these migrant workers perpetually short of money with no savings. A Rs.2000-3000 expense, resulting from children's education or a medical emergency, forces the women to borrow, even at a high interest. Again there is no institutional support or bank credit available to them. They have to borrow from their co-

workers. The workers are not entitled to old age pension, gratuity and bonus. They have no medical insurance. Therefore, all medical expenses of the workers and their families have to be borne by them. Though domestic workers have been included in the Unorganised Workers' Social Security Act, 2008 (Act 33 of 2008), they have not yet got any benefits. Even in Maharashtra, the Domestic Workers Welfare Board Act 2008 has not been implemented (Jagori 2014).

All of the members of the FGD had the same experience on their first journey to move to New Delhi and finding work as a domestic worker. They spent their own money to reach New Delhi and spent ten to fourteen days on their own before finding work. Gradually, they got absorbed in the rigour of domestic work and a new phase of their life began. Unfortunately, since most of them started work as domestic workers, except few, they didn't get regular holidays, had not tasted good food, hardly got a leisure period of an hour for rest or something and some were even devoid of basic necessities like a toilet, bathroom, and medical facilities. They believed that absence of rules and regulations were the reasons for their hard life. If rules could be made for construction workers, why were they neglected? Is it the case that government didn't recognize their work as employment? Maybe the government didn't feel that those working as domestic workers were carrying out enough work. This is the reason that domestic workers are suffering and facing a number of problems in their daily lives.

Sonimoy Moti, a domestic worker, took a rented house in Chandni Chowk, Hatia. The rent was Rs. 500/- per month. The house did not have the basic amenities like toilets and sanitation facility. The area was out of electricity. No one in that community heard about the 'Ujjawala Scheme' provided by the government and the form for LPG connection. Majority of them had small gas cylinders for which they paid Rs.90 as the refill amount Moti's family was a bonafide member in that list. Moti had a ration card, but that too in her native. Last time they visited their Village one year ago at the time of farming. Though she had Aadhar and Voter Card, the absence of a bank account along with the lack of knowledge was creating problems for Moti. As a result, she was not able to avail the basic facilities and services provided by the government. There were instances where the domestic workers due the absence of their own bank accounts, kept their hard earned money in their brother's account. Koili Tigga, a domestic worker mentioned the same.

In the Gorkho village, all participants shared that they have *Kachha House*. Electricity facility is there but the supply is irregular. Other household requirements like gas, drainage system, safe drinking water, sanitation are still a distant dream for them. While in Gorkho, people depend on a single well for drinking water, in Haril the entire community depends on a single hand pump. Though they are having Ration Cards, Aadhar cards, Bank account, but they believe corruption in the Mandar Block offices deprives them of any benefits that they might be entitled to under the government welfare schemes.

None of them really like working as a domestic worker. They feel that being in someone's house all day takes away their freedom and personal space. But, they are doing this work only to fulfil their untouched dreams of educating their children and to look after their family. They firmly believe that if government comes up with proper policies to take care of security, protection against exploitation, working hours, pay, healthcare and others, it would be beneficial for them and would also ensure welfare of the entire Domestic Workers' Community.

Narratives from the field indicate that domestic workers were always at the receiving end of government policies. They seldom have an organized mechanism for collective bargaining. As a result, there is also a lack of a standard method of determining the wage rate for domestic workers. While some workers are aware of the policies meant to protect interests of the workers in the informal sectors, they were equally aware that those laws and regulations were not applicable to them. They were aware that the sector is deprived of state regulation - be it in terms of labour legislations or social policies.

Labour regulations have remained a challenge in the sector much more than any other informal sector due to the specificity of work and employee-employer relationship, and the workplace being private households. Domestic workers are excluded from the coverage of many core labour laws⁴⁴ as they do not qualify for the definition of the 'workmen', 'employer' or 'establishment' as defined in these laws. This demands extension of the

⁴⁴ Domestic workers are not included in the central list of scheduled employments under the Minimum Wage Act of 1948. Domestic workers are excluded from core labour laws such as Payment of Wages Act (1936), Workmen's' Compensation Act (1923), Contract Labour (Regulation and Prohibition) Act (1970) and Maternity Benefit Act 1961. These labour laws which were mostly drafted between 1930 and 1970, were intended for manufacturing units and classify every employee as workman who is defined as "any person employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work". Since household is not identified as an industry domestic workers are outside the purview of these Acts. Though minimum wage law has been extended to domestic workers in some states, no amendments to other labour legislations toward including domestic work are made in any of the states.

definition of workplace meaning a structural change in the formulation of labour laws in the country. In general, there is an overall reluctance to do so and accept home as a work place. The government of India voted in favour of the adoption of the ILO convention, which puts some obligation on the state to come up with legislation/policy protecting domestic workers.

(III) Sexual Harassment

None of the members of the FGD have experienced sexual harassment in their workplace, but they have heard a lot from their friends and families. Hearing of cases of sexual abuse of their friends helped them to be cautious and avoid uncanny circumstances. But at the same time, they believe that sexual exploitation is not the only problem. Many of them have gone through mental harassment throughout their working life which they consider is bigger and more hazardous. *Mina Kerketta* emphasized about an anti-sexual harassment committee for workers, at the society where she works for the pilot and his wife. The Committee tries to educate the women working in the society about sexual harassment and they have been told to approach the Committee if they face any instance of such kind. But, as *Mina* is working with a nice couple, she feels much more secured compared to others as far as sexual harassment is concerned.

Mary Topno, a domestic worker shared her own experience of sexual harassment that she faced during her work as a domestic worker. When she was working in a particular household near Ashok Nagar, she realized the pain of sexually exploited women. The family consisted of husband, wife and two daughters. Every evening the employer returned to his house drunk and in frustration of not having a boy in his house, exploited Mary physically and sexually. When he crossed the limits, Mary left the job and joined somewhere else.

But the exploitation did not stop. A man at her workplace used to disturb Mary every day and offered Mary for marriage despite having his own wife. He would even come to the school where Mary worked later. But after joining IHD he stopped disturbing Mary. Another experience that she went through was during her irregular work in construction sector, where a contractor harassed her physically and told her not to disclose to anyone against threatening. Both the incidents in Mary's life are nasty and horrible. She thought of lodging a complaint with the police several times, but restricted herself due to the rude behaviour of the authorities. She felt that this country was run by rich and powerful people where there were no rights assigned to the poor. All these incidents of harassment were the result of Justice is far away from the hands of poor. If you have enough money you can

control everything, otherwise you would get harassed everywhere. Police will not help you; rather they would try to make you guilty. Another problem she thought was also responsible for all these uncanny behaviours is 'social stigma'. People in the society would look at you like you did all the mistakes; the entire onus lay on the part of the complainant. So it was better to keep yourself numb and suffer. She felt that until and unless corruption was controlled, it was not possible to free the society from all these unwarranted incidents. In another incident, Sonimoy Moti saw a contractor rape her friend in front of her and threatened her not to disclose it to anyone. Soni thinks that the onus is on the policymakers who are not able to implement the policies properly. She also blames the police for not doing their duty well because of which incidents of rape and violence are rising at an alarming rate.

Field study highlights that while there were no incidents of sexual abuse by the employers, verbal, physical abuse and mental harassment were common in the households. Domestic workers were forced to work relentlessly for the entire stretch of the day without breaks. If they failed to perform any task given by the employer, they had to face outright abuse. There were times when workers were made to do extra work without any additional compensation. All these factors were compounded by their harsh living conditions in squatter settlements in the cities. Many workers also faced abuse if they reached late to work. Even if the workers wanted to give an explanation for being late, the employers didn't like to be answered back. In all such cases, it is seen that workers have no access to any help or complaint mechanism against abusive behaviour of the employers. There were instances where the workers wanted to leave the abusive employer's house/ have left job, but returned back for the want of money. However, after working a few years in the same household they start looking for alternatives to escape the abusive behaviour of their employers. As soon as they find an alternative they quit. There were instances in the field where domestic workers have shifted from domestic work to construction work.

In another incident, Sonimoy Moti, a domestic worker from Ranchi was suspected of theft and was repeatedly beaten up by her employers and tortured. As a result, she left the job, returned back to Ranchi and continued working as a daily wage labourer. It is important to note that although she was tortured physically by her employers, she did not register any complaint against them. She quietly quit the job and returned to her native place. This was also true for all other domestic workers who had faced some form of abuse in the hands of their employers.

These instances show that the power dynamics between the employers and the employees, fear of discrimination and social stigma, and the migrant status of the workers ensured that they refrained from complaining against their employers. Lack of awareness of laws, little confidence in complaint mechanisms or stigma due to breach in confidentiality can also be responsible for the silence (Sanhita 2007). Thus, discussions with migrant domestic workers revealed how incidents like these aggravated the already wretched situation of the out-migrants in the new cities.

Chapter III

Tea Plantation Workers of North Bengal

I

Tea Plantations: A Colonial History

Agriculture houses a large proportion of the informal labour, and within this are the tea plantations. The plantation industry was regarded as the country's nucleus of employment for millions of workers, especially women, ever since the second half of the 19th century. Labour, more than land or capital was the central focus of the development and flourishing of tea plantations in India (Thompson 1935; Sharma and Das 2009).

In the first half of the 19th century, 'Boonooahs', 'Dhangars' or 'Hill coolies', adivasi labour of Chotanagpur (usually from Santhal, Munda and Oraon tribes), migrated seasonally during the winter months to various districts in Bengal (then including Bihar) for employment in the indigo plantations and factories (Van Schendel, 2012). It was only in the latter half of the 19th century that the infamous recruiters of indentured labour for Assam's tea plantations turned to the Chotanagpur area as the 'favourite hunting ground' for the so-called 'jungly coolies' who were their labourers of choice (Samita Sen, 2012), later extending their field further south to the tribal populations of the Central Provinces (Bates and Carter, 1992). Unlike the predominant pattern of seasonal migration of tribal labour, the nature of migration of tea plantation labour was different. Most migrants for tea plantations were permanently detached from their areas of origin, and their descendants in Assam, now referred to as 'tea tribes', still constitute a major part of tea plantation workforce both in Assam and the Doars of West Bengal. They are still located within the enclave economy that combine both agricultural and industrial characteristics, and are also still largely socially segregated from the rest of the local population (cf. Mazumdar 2014: 13).

The recruitment of the workers to the tea plantations in the early stages was family-based. Workers were encouraged to migrate with their families because this largely served three

purposes. Firstly, this provided cheap labour as all members of the family- men, women and children- were employed rather than as individual workers. Secondly, making use of women's reproductive labour, family migration ensured the reproduction of future workforce which would ease the problem of further recruitment as recruitment costs were expensive. Lastly, family recruitment also ensured that workers did not return to their native lands on the expiry of their job contract. The tradition of family-based employment has continued and the planters have employed a large number of women workers as a strategy to keep the wages depressed (Bhowmik and Sarkar 1998). Thus, employment of women in the plantations was historically sought by the planters in order to 'contain the male labour force' (Rasaily 2014). Quite plausibly, the planters also saw women adapting well to the most tedious and prolonged task of tea picking in the plantations (Chatterjee 2003). Therefore, engagement of women's labour was higher in the tea plantations because of their gendered attributes to the task of tea picking in particular, and for maintaining a steady social reproduction of labour (Rasaily 2014).

The unfree methods of labour recruitment and migration to distant lands, and the highly repressive, coercive, and isolated conditions in which men and women worked and lived, marked the conditions and characteristics of plantation labour in the colonial times. Indenture and the use of force (involving the whip, the stick and the legal and extra legal power to recapture those who tried to escape) was initially used as a strategy to keep men and women tied to slave like conditions in the tea plantations of Assam and Bengal with their children supplying labour reserves and reducing the expenditures required for long distance recruitment (Mazumdar 2014). Tribals brought to the North Bengal Dooars were paid wages that were half the wages of agricultural labour in the area around the plantations, and the labour lines in the plantations were kept strictly insulated from the agrarian society that bordered on it. (Sugata Bose, 1993)

Tea Plantations in Independent India

The transition from colonial to post-colonial plantations is not only characterised by the changing relations of production, but also by associated changes in the nature of work, patterns of employment, occupational structure and the everyday life of plantation workers (Sharma 2016). As evolved from the mid-nineteenth century, plantation history has been replete with examples of starvation deaths, protest suicides, chronic malnutrition and massive repression of the new found visibility of the plantation workers by the state-capital coalition.

Independent India saw substantial changes in labour legislations, and the Plantation Labour Act (PLA, 1951) was one of the first sector specific labour laws to be enacted in the interests of the plantation workers. This statute came into force in 1952 obligating the plantation owners to provide the workers with certain facilities that were mandatory for a decent living and healthy work life. Nevertheless, it is striking to note that even after six decades of its enactment and implementation, the deplorable conditions in the tea plantations of North Bengal lay in the non-compliance with the mandates of the PLA by the plantation owners. Despite several amendments in 1981, the PLA did not prove to be radically different. Instead of bringing about positive changes, it only consolidated and legitimized the existing structure.⁴⁵ Further, more than three decades after the enactment of the Equal Remuneration Act (ERA, 1976), employers continue to use women's employment as a strategy to keep wages depressed in the tea plantations (Sarkar and Bhowmik 1999).

The Tea Board of India, established in 1903, also played an instrumental role in providing welfare schemes for workers' protection. In view of the tall promises made for workers' welfare, an assessment of these Acts remained an important step in examining their contribution in providing for better working and living conditions of the workers. Moreover, in implementing the provisions laid down in the Acts and extending them to the workers, labour unions have played a central role in protecting the interests of the workers.

Crisis in the Tea Sector

In the contemporary times, substantial changes have taken place in the situation of the tea plantations in India. The problems faced by the plantation labourers in pre-independent India or in early period of independence were considerably different from the contemporary problems. As a result of privatization, globalization, and liberalization new challenges have been posed before the plantation industry. The profitability of many of the tea plantations has reduced greatly, and a large number of sick plantations have come into existence (Pio 2006).

Despite its importance in the international market, tea industry of India is going through a phase of crisis since the 1990s. Since tea has emerged as an important export item in Indian trade, this has made the position of the tea industry in the world supremely important. However, India's share in the total production of tea, although marginally, has started

⁴⁵ (<https://www.opendemocracy.net/openindia/medha-uniyal/death-in-tea-gardens-of-dooars-india>)

declining over the years. As a result, India's share in the total world export of tea is also declining, and the quantity of tea exported is more or less stationary. This shows that India is facing a situation of near stagnation in the export market, and the industry is gradually tilting more towards the domestic market (Dutta and Sarkar 1993). From a macro perspective, an immediate cause of the crisis has been the perceptible decline in international and domestic prices of tea, mainly because of the recovery of Kenya's production from a past damage in the late 1990s coupled with the loss of Iraqi market due to the war (Hayami and Damodaran 2004; Jain and Rahman 2008). The decline in tea prices in the international markets severely affected the Indian tea sector also in terms of the sharp decline in value realized from tea export.

As the un-remunerative prices from tea affected the profitability and the viability of the plantations, the large scale planters in particular adopted various cost cutting and prudent financial management measures to overcome the crisis (George and Joseph 2005). Moreover, the crisis management strategies adopted by the planters had serious gender implications in terms of feminization of work, employment decline, and effect on wages of women workers (Vishwanathan and Shah 2013). In India, the crisis also attributed to the siphoning off all profits as a result of which no real reinvestment on tea estates was possible to improve quality. All these factors combined led to the closing of tea gardens, and the first closures began in the 1990s in West Bengal (AMRC 2010). As many as 20 tea estates in Kerala, 30 in West Bengal, about 70 in Assam, and three or four tea plantations in Tamil Nadu have been closed down since the late 1990s. It is estimated that more than 60,000 workers lost their jobs since 2002, and the livelihoods of tens of thousands more were at stake (Gothoskar 2012). While the crisis had affected the general health of the tea economy, the loss of livelihoods meant unfathomable misery, especially, for the majority of the women workers employed in the tea estates. Since women workers are central to the Indian tea economy, the experience of the loss of income and livelihoods as a result of the crisis has affected them tremendously. Women's work in the tea plantations has been increasingly casualized. Unlike male workers who have the possibility and are mostly permanent workers, women have a higher share in casual work in the tea gardens. A substantial proportion of female adults also reported of them being unemployed due to the crisis.

II

KEY FINDINGS

Tea plantations in North Bengal have a mix of Adivasi, Nepali, and Rajbangshi⁴⁶ population, with Adivasis constituting 90 percent of the total population in the Dooars and Terai tea gardens. Majority of the tea garden workers in the Atal Tea Estate were Adivasis. While the Adivasis have been living in the tea estate for many generations now, their forefathers were brought by the British from Bihar, Jharkhand, Odisha, and other nearby states as cheap labour. They mostly speak ‘Sadri’⁴⁷ language. Since the labourers migrated from different regions of the country, and from diverse socio-economic and cultural backgrounds, ‘Sadri’ derived from ‘Sadhani’, a language of the Chotanagpur Plateau, emerged as a link between these communities.

Characteristics of the plantation labour force

One of the major characteristics of the plantation labour force is the categorization into permanent and *bigha* or temporary workers. While permanent workers assured the tea plantations of a steady flow of labour supply, casual workers constituted the reserve army of labour meeting the demands of the plantation in times of need and crisis. While women on the whole formed a preponderant part of the labour force, with the progressive increase of land under tea cultivation, a trend of increasing casualisation of the labour force, particularly female labour force was on the rise. This shows that plantation workers by no means formed a homogeneous group. There were around 350 permanent workers in the Atal Tea Estate, 603 in Batabari Tea Estate, and 1075 in Mangal Kota Tea Estate. The temporary workers were recruited to meet the demands of the plantation during the peak plucking season, i.e. from

⁴⁶ Rajbangshi community is a tribal community, earlier practicing animism with recent converts to Hinduism and Christianity in few pockets. They originally belong to the Great Kamtapur that got divided into different states and interspersed with countries like Bangladesh and Nepal. The Kamtapur Liberation Organisation (KLO) has been instrumental in demanding Kamtapur, a separate statehood (Rasaily 2014).

⁴⁷ Sadhani/Sadri originated as the mother tongue of the *Sadhans*, an Aryan group among the Non-Aryans in the Chotanagpur Plateau (Navarangi 1965, cited in Dey 2011). It evolved as a link language between the Adivasis living in and around the Chotanagpur Plateau which covers the present day Bihar, Jharkhand, Chhattisgarh and parts of West Bengal and Orissa. These adivasi communities used Sadri as their link language for their intra and inter community communication. The adivasi immigrants in Assam and Bengal tea plantations initially started Sadri only for intra-community communication. However, as their interaction grew at the social level the use of the link language also expanded (ibid.).

May to September. Besides the daily wage (*hazira*), permanent workers were entitled to all the fringe benefits like housing, medical facilities, subsidized ration, a stack of firewood, protective clothing, and tea leaves as prescribed by the Plantation Labour Act 1951. These workers were allowed to take 14 days of sick leave per year. While talking about maternity benefits, Josepha Tirkhi, a permanent worker in the Atal Tea Estate informed that only permanent workers get 3 months maternity leave, whereas female non-workers (contractual/bigha workers) do not receive any maternity benefit.⁴⁸

The bigha or temporary workers category included both male and female workers above 18 years of age. They were also entitled to the statutory minimum wage as defined by the wage board, but not all fringe benefits that was the privilege of the permanent workers. Being casual workers they could only avail subsidized ration, firewood, tea leaves, and protective clothing especially for women workers involved in the task of tea plucking. Fieldwork revealed that many temporary workers even after working in the same tea garden for several years did not get promoted to permanent position. Tara Majhi of Atal Tea Estate complained that inspite of working in the tea estate for the last 20 years, she is still a non-worker.⁴⁹

Although the terms ‘permanent’ and ‘casual’ were relative in their definition, permanency gave some guarantee of work during a certain period of time, which was lacking for those who constituted a larger proportion of the casual/temporary labour force. The bulk of the temporary or bigha workers were recruited from the families’ of the resident workforce or from the nearby villages during the peak plucking season (Committee on Work on Plantations 1970). The selection of these bigha workers depended on the family’s employment situation, Union’s benevolence and the management’s assessment of the need of the workers (Chatterjee 2003).

Pattern of work and wage structure in tea gardens

The wage rates for the workers were kept extremely low as a basic mechanism to force the entire family including children to participate in wage work in the gardens or the labour market (DasGupta 1986). Moreover, the availability of a large pool of unemployed labour

⁴⁸ Interview with Josepha Tirkhi, place and date

⁴⁹ Interview with Tara Majhi, date and place

within the plantations placed the management at an advantageous position. It is through the existence of casual labour that the management succeeded in keeping the general wage level depressed. Women formed the bulk of the casual labour force especially during the peak harvest season when their numbers increased to over thousand workers.

Field data shows that lives of women workers in the tea gardens were severe and dexterous in multiple ways. Plucking was the most labour-intensive task in the tea plantation. Plucking was generally done by women and adolescent girls who had learnt the skills from their mothers (Kurian 1998). It was a very tedious task, and there was great level of supervision by the Sardars at every stage of the task so that the workers did their job properly. Field data revealed that the current wage rate in the tea gardens of North Bengal (both permanent and temporary workers) was increased to Rs. 150 per day, which was Rs. 132.5 per day for the last 3 years (2015-2018).⁵⁰ It is noteworthy that the daily wage rate for tea garden workers is much lower than the minimum wage rate for skilled and unskilled work in agriculture in the state of West Bengal. The minimum wage rate for unskilled agricultural work (without food) and (with food) is Rs. 234 per day and Rs. 217 per day respectively. Whereas the minimum wage rate for skilled agricultural work (without food) and (with food) is Rs. 284 per day and Rs. 267 per day respectively.⁵¹ It is to be noted that the wage of *Sardars* (supervisors) were a little higher than that of the daily-rated workers, because *Sardars* fell in the category of sub-staff. Therefore, the nature of their work and payment status was not equivalent to that of daily wage workers. Field data showed that Atal Tea Estate only had male *Sardars*, whereas there were other tea estates that employed female *Sardars* as well.

Menuka Lohar, a tea garden worker in Atal Tea Estate mentioned that she desired for a hike in the wage rate as Rs.150 per day was not sufficient enough to run the family. However, the workers feared that demanding a hike in wages and sufficient ration might trigger a similar situation like in 1993-1994. It was then when workers raised their voices for the same, and

⁵⁰ Fieldnotes, date and place

⁵¹ Office of the Labour Commissioner, Government of West Bengal,
<https://wbcl.gov.in/sites/default/files/synopsys/01-01-2018/agriculture.pdf>

the Atal Tea Estate owner closed down the tea estate for a month without paying the dues to the workers.⁵²

The plantation system was finely tuned to complete the maximum number of *nirics* (pre-set tasks assigned to workers) via a production process differentiated along the lines of gender and age. The most important task—picking two leaves and the bud—was entrusted to women and young girls at relatively lower wages, while the highest wages were earned by men conducting indoor factory processing work along with the *babus* (plantation employees belonging to the category of sub-staff paid monthly) and the *sardars* (Sharma 2006, cf. Sharma 2016: 119). Payment in the tea garden was generally based upon piece-rates, which were related to the completion of allotted tasks (Sharma 2016). In piece rated tasks, the duration of work was generally implicit in the job specification. Such tasks required intensive work in specified shorter period of time for which the quality of work can be determined by the eye (Ramachandran 1990). Usually, in the earlier years of the plantation industry, the tasks set forth by the planters were extremely high (Das Gupta 1986).

It is to be noted that the wage structure is not uniform within tea estates and across tea gardens in Assam and North Bengal. The wage structure differed according to the type of garden (small tea gardens or big tea estates), status of workers (permanent or temporary workers), and nature of work (field or factory based work). The daily wage rate for workers working in the small tea gardens was lower than those working in the big tea estates. Moreover, while the wage rate for permanent and temporary workers in big tea estates was equal, the former was entitled to several fringe benefits which were denied to many temporary workers. Further, the wage rate for workers in the field remained the same. However, for certain on-field operations mostly performed by men like spraying or pesticide application, they were paid five rupees more than women who were predominantly tea pickers (Sharma 2016). The factory workers (both men and women) however, were paid slightly more than the workers in the field.

There was an incentive wage system called '*ticca*' in the tea gardens to encourage workers to pluck leaves above the fixed quota. Field discussions revealed that the required target for a

⁵² Interview with Menuka Lohar, date and place

wage of Rs. 150 is settled at 22 kilograms of tea leaves. The task work was set at 22 kg, and the workers were awarded an addition of Re.1 to Rs.3 depending upon the leaves picked beyond the daily task work. Sukhmoy Oraon has been working in the Mangal Kota Tea Estate since 1976, when she was only 16 years old. She was of the opinion that at that time she was paid only Rs.4 per day, and the task work was set at 22 kg per day. An addition of 0.70 paise/ kg was given to the workers for leaves picked beyond the task work. She further added that her great grand mother was the first person from her family to work in the tea garden. Since then her entire family has been in the same tea garden. Her great grand mother used to receive 1-2 annas as wage per day. Before 1978 workers were not provided with any gratuity. The owners gave bonus as per their will. Another worker in the Songachi Tea Estate, Vijay Munda, also the secretary of the tea estate labour union said that in 1994, they used to get Rs. 72 as the daily wage or hazira.

Ticca work was not a regular phenomenon for tea estates in Assam and Bengal. It was only during the peak season, beginning in the month of May, that tea gardens announced ticca in order to earn maximum profit. Despite leaf pickers getting the opportunity to earn extra money under ticca work, it is to be noted that this system was inherently exploitative in nature. This system also structurally organized women's self-exploitation of their labour by keeping them bound to their work for the entire stretch of the day in the hope of earning extra money (Sharma 2016).

The working hours in Atal Tea Estate was divided between the field and the factory. The factory workers were employed in two batches. The morning shift was from 6:00 am to 10:00 am, and the evening shift was from 6:00 pm to 10:00 pm. Whereas, for workers in the field, their shift began at 7:30 in the morning and ended at 5:00 in the evening. Consequently, the leaf pluckers were forced to spend their entire stretch of the day in the field/plucking section. In the factory, both male and female workers worked till 10:00 in the night.

Provision of basic amenities: Living conditions in Atal Tea Estate

Adivasis in Assam and Bengal have suffered a history of exploitation even after sixty years of implementation of the PLA, 1951. Provision of proper and decent housing forms an essential part of the remuneration for tea plantation workers. The PLA, 1951 stipulates that

*pucca*⁵³ houses with specified parameters should be made available to workers in a phased manner. However, field data showed that while majority were provided with housing in the Atal Tea Estate, many of the houses had broken down and workers have complained of the lack of efficiency on the part of the management to restore the dilapidated ones. A respondent of Atal Tea Estate, Mr. Barai, who is a permanent worker, was of the view that owing to his work status he is entitled to ration from the tea garden owner and also a company quarter for their living. However, houses in the labour lines were in a deplorable condition.⁵⁴ His wife, Ranjita Barai, mentioned that the houses posed more danger to their lives than being protection for them. While the company quarters were already cramped and dingy, rainy seasons made situations even worse for the workers. Water entered the house from the holes on the walls causing a number of diseases and damaging their belongings. That besides, the structure of the company houses was centuries old with no initiative on the part of the management to renovate or rebuild them with the changing times and needs.⁵⁵

Further, the cramped condition of the houses was also the result of the ever growing size of the plantation family and their live-in dependents. The ever growing population of casual labour force within tea estates has aggravated the housing problem further. In the tea plantations, the benefit of housing became a sort of compensation for the workers who had travelled so far to work in the tea plantations of Assam and Bengal in order to earn a livelihood. Mr. Barai said that for all those permanent workers who were not provided with housing within the plantation premises, got Rs. 3700 from the company every 3 years for the construction or renovation of their self-built houses. Besides being a paltry sum of money, the house rent allowance was not regularly and steadily paid by the plantation companies. This compelled the workers to shell out money from their pockets to build or renovate their houses. This shows that the economic burden on workers was a real issue that put them in a disadvantageous position vis-à-vis the management in situations of abject poverty.

Intrinsic to the issue of housing in the estate was the problem of the lack of adequate infrastructure like supply of clean drinking water, ventilation, electricity, latrine and sewage

⁵³ Made of brick and cement

⁵⁴ Interview with Mr. Barai, date and place

⁵⁵ Interview with Ranjita Barai, date and place

facilities, sanitation etc which added to the woes of the workers. Ms. Urmila Tirkhi, another tea garden worker in Atal Tea Estate, held the same opinion as Ms. Barai regarding the living condition of the workers in the estate. She said that most of the workers constructed their own houses which were not in a very good condition.⁵⁶ While there was a lack on the part of the management towards workers' welfare, workers themselves were not financially equipped to construct and maintain their own houses resulting in poor living conditions. Josepha Tirkhi, a tea garden worker and leader of Mahila Samiti in the Atal Tea Estate, pointed that besides housing, the problems faced by tea garden workers can be assessed at multiple levels. Half-hearted implementation of the provisions of the PLA and the lack of necessary amendments in the law has contributed to making Adivasis socially and economically vulnerable.

Field discussions showed that workers in the tea garden faced a gamut of contentious issues.

- *Water and sanitation:* During the discussions, workers in Atal Tea Estate informed that there was no clean and safe drinking water provided by the tea owners or by the government. Moreover, toilet facilities were also not provided to the workers. They further added that until last year the households inside the plantation were using open space toilets, but now they have their own sanitary toilets. This reveals the day-to-day ordeals of the plantation households due to the lack of proper infrastructure supported by the tea owners and the management. While sanitary toilets have started coming up in workers' houses, it was found that not all households could afford to build one. Moreover, majority of the households have built *kuccha* instead of pucca toilets. Since *kuccha* toilets are not resilient to heavy rains and thunderstorms, the required investments for their maintenance is much more which the workers find difficult to afford. The low daily wages against incremental living costs put extra burden on them. As a result, after a point of time, many of these toilet structures collapse and become non-functional. As a result women use open spaces as toilets and are forced to answer nature's call before dawn, in order to ensure that no one is prying on them. This shows how lack of such basic infrastructure has important consequences for women and how it affects them differently.

- *Access to healthcare:* There was neither a proper hospital, nor were medicines available in the health centre of the Atal Tea Estate. The tea estate does have a health centre, but with only one doctor, one nurse, Monika Tanti, and one compounder. There was no medical expert

⁵⁶ Interview with Urmila Tirkhi, date and place

to attend to the patients. The settled plantation labourers approached the hospital for necessary medical services, but in the absence of proper medical facilities it became difficult for them to rely on inexperienced hands. The estate hospital was poorly maintained. For better treatment, the labourers had to travel long distances outside the tea garden. Maternity benefits in terms of reimbursing the medical expenses by the company during the delivery of a child could only be availed by permanent women workers in the tea gardens. Temporary or non-workers are not entitled to free medical facilities in the tea garden hospital.

- *Schools and educational status:* As far as educational facilities were concerned, one primary school (upto class IV) was provided by the management inside the tea estate. However, the school collapsed during an earthquake, and presently Atal Tea Estate has no school of its own. This shows that lack of proper infrastructure within tea garden premises affects the educational levels of children from adivasi families. This is particularly true for girl children. The lack of a school in Atal Tea Estate will not only increase drop-out rates among girls, but will also increase their induction and employment in tea plantations causing a high incidence of child labour in the tea gardens.

- **Crèche facility:** The PLA 1951 says that, for any plantation that has employed fifty or more women workers, the employer should provide crèche facilities for their children who were below two years of age at suitable sites in the workplace. There are only two crèches in the Atal Tea Estate.

- **Firewood:** Firewood is the primary source of fuel for all tea garden workers. Several workers complained that no or very little firewood was provided by the management to the workers. This is especially true for temporary or non-workers of the tea estate. While permanent workers still managed to get firewood from the management owing to their permanent status in the tea gardens, the management flouted the rules when it came to temporary workers. Employers were giving firewood free of cost to the workers. 2.5 peels of firewood were given to the daily wage workers, 4 peels for subordinate staff and 8 peels for the staff. The size of 1 peel of firewood was 5ft length, 5 ft height and 2.5 ft width. However, over a period of time size of wood provided has decreased. Owners are not giving firewood regularly. It has been found that these days, tea estate owners make profit by selling the wood in the market, and they try to pressurise tea garden workers to take cash instead of firewood. Workers are demanding LPG connection instead.

For Josepha apart from wage, lack of safe drinking water and proper houses were the major problems faced by most of the tea garden workers. While talking about housing condition she informed that most of the “Kucchas” (huts) were not provided by the management, so the workers have been compelled to construct their own houses.⁵⁷ Since the workers cannot afford to invest in housing, the structures are not properly made and cannot be sustained longer. Even though the workers register a complaint with the management, the latter hardly pays attention to the workers’ woes.

Subsidised foodgrains to tea garden workers

In all operating plantations, the plantation management provided each permanent or temporary worker with a family ration card and provided him or her with fixed amount of food grains at 0.56 paise per kilogram. The management procured the food grains from the Food Corporation of India (FCI), registered under the Essential Commodities Act (ECA) of 1948, at a very nominal rate; rice at Rs 8.30/kg and wheat at Rs 6.10/kg. While the permanent workers continued to avail the benefit of subsidized food grains till their age of retirement, the temporary workers could avail the same only for the specific period of their service in the plantation. The system was designed in such a way that while individual workers both men and women got ration for themselves, there was also something called the ‘dependents’ ration’ which included food grains at subsidized rates for children. If a daily rated permanent worker worked regularly for 12 days he or she was entitled to 3.26 kg of rice and 3.26 kg of wheat along with 2.88 kg of rice and wheat respectively for children in the age group of 2-8 years and 2.44 kg of rice and wheat respectively for children in the age group of 9-18 years.

The same arrangement worked for casual or temporary workers as well. However, those who were in the category of sub-staff were slightly privileged than the daily rated workers in terms of their procurement of family ration. They were entitled to 13 kg rice and wheat respectively per month and minor dependents were entitled to 2.44 kg of rice and wheat and dependents in the age group of 9-18 years were entitled to 9.76 kg of rice and wheat respectively.

Josepha Tirkhi mentioned that permanent workers were entitled to ration against Rs. 25/ month which was deducted from their salary. However, from 2016 onwards the tea

⁵⁷ Interview with Josepha Tirkhi, date and place

companies stopped providing ration to their workers, and in return a hike of Rs.10 per month in salary was made. Now ration is available from the government as per the Khadya Sathi Scheme. The monthly quota as per the scheme is 35 kg per family per month. The non-workers who do not have a ration card buy the daily necessities from the nearby shops. The rate of wheat here is Rs. 24/kg and rice is Rs. 32/kg.⁵⁸ Discussions with Mr. Zia Ul Alam, general secretary, Chai Bagaan Shramik Union informed that following the implementation of the National Food Security Act, subsidized ration for tea garden workers has been suspended since February 2016. He further added, the West Bengal government's Food and Supplies Department now provides the tea estate management with subsidised food grains at the rate of Rs 2 per kg (the monthly quota for this scheme is 35 kg per family per month). This is distributed to workers by the tea garden management at the same nominal rate of 0.40 paisa per kg. However, the tea garden management is now relieved of its earlier obligations. Thus, since February 2016, each estate began to save Rs 660/worker per month. Hence, tea workers are supposed to get Rs 660/month as a value of ration that they used to get earlier. Unfortunately, workers are still deprived of this.⁵⁹

Employer's argument was that as they were providing ration at a highly subsidized rate, as a component of wage, so they wanted to continue it. There was debate among the unions. Some wanted to forgo this system and opt for cash instead and some were arguing that it was a guard from inflation. If workers would receive the entire money in cash and not in the form of food subsidy, male workers may misuse the cash.

Unions and struggle for labour rights in tea gardens

The fact that unionism appeared fairly late among tea garden workers of Bengal and Assam can be attributed to various reasons. Tea garden workers came from the most backward segments of the society and didn't understand and realize the importance of organisation and collectivization. Further, life in the tea gardens was highly regimented with busy work schedules, and close monitoring and supervision by the managerial authority. Moreover, as majority of the workers were indentured labourers, they were bound by rigid and penal type of service contracts (Singh 2001). Therefore, it was only from the 1950s that the workers in

⁵⁸ Interview with Josepha Tirkhi, date and place

⁵⁹ Interview with Zia Ul Alam, date and place

the plantation industry were allowed to organize themselves under the banner of various unions. Discussions with leaders and members of various tea garden unions in the Jalpaiguri district brought many issues to the forefront. These unions have been struggling for bettering the working and living conditions of tea plantation workers. Korne Bahadur Lama, a W.B.T.E.A member has been working for the Communist Party of India (Marxist) since 1984. He said that a two day labour strike was organized in December, 2017. The two main issues that were raised through the strike were household facilities and demand for minimum wage for tea workers.⁶⁰

Minimum Wages

Zia Ul Alam was of the view that in 1951 the Plantation Labour Act (PLA) came into existence to establish certain social and economic rights for workers in different plantation sectors. In 1957, the 15th labour conference raised the issue of minimum wages for all industrial workers. Representatives of employers' associations, government and trade unions were present. All parties agreed that the wage would be determined on the basis of the dependency ratio of 3 i.e. requirements of three consumption units, but this was opposed by the tea owner's association. They argued that as there was equal employment of male and female workers so there were two earners in the family, hence the units should be 1:1.5 and not 1:3. Meanwhile, the union government announced that in absence of unanimity in a wage board, any award would not be implemented by the government. This put the management in a strong bargaining position. This is exactly what happened in the wage board for the tea plantation industry. Since the employers refused to accept the demand of including 3 units, it was reluctantly accepted. Low wages were built into the system, and the since then the workers are getting just half of what they should get.

In Assam and West Bengal, wage is determined through collective bargaining in a tripartite forum. Representatives of planters, representatives of workers' union and government representatives sit together through a series of negotiations to determine daily wage for a specified period. But it's sad that such labour market institution leads to abnormally low wages. Employers argue that plantations workers get many benefits apart from monetary wages. Moreover, even if one adds the monetary equivalent of such welfare provisions,

⁶⁰ Interview with Korne Bahadur Lama, date and place

wages as received by tea garden workers stand significantly below than that of wages in similar employment category. After Southern states enforced minimum wage rate as per the dependency ratio of 1:3, wages of workers in South India and wages of workers in North India started differing. In South India, government was directly giving rations to tea garden workers but in Assam and Bengal there was no PDA system.

In West Bengal tea plantations, Planters' Association is represented by CCPA (Constituent Committee of Planters' Association). In the month of February 2014 tripartite agreement was signed between the state government, workers union and tea garden owners which agreed to the hike in the wages of tea garden workers. As per that agreement, tea garden workers in Dooars area would get a hike of Rs 17.50 in the 1st year while in the 2nd year they would get a hike of Rs 10 and in the 3rd year they would get another hike of Rs 10. Accordingly, wage would increase to Rs 112.50 in the first year, Rs.122.50 in the second year and Rs. 132.50 in the third year. In 2018, the West Bengal government announced the interim hike to increase the remuneration of tea workers' from Rs 132.50 to Rs 150 with effect from January 1, 2018. Usually, a wage agreement for tea workers is executed for a three-year period and the last agreement had expired on March 31, 2017. The state unilaterally announced this as an interim measure without discussing it in the Minimum Wage Advisory Committee. Joint Forum of Trade Unions in the tea sector opposed this and did not accept. Since then, state government is forcing workers to accept this hike. The Forum has been demanding implementation of the Minimum wages and assessment of the value of traditional ration, which has been suspended since February 2016 following the implementation of the National Food Security Act.

In Assam, minimum wage was calculated 2 months back and it came up to Rs. 351. Still in Bengal workers are not getting what they should get, if both the cash and non cash component of worker's wages is put together their earning is less than the amount paid to the workers under MNREGA. Presently, average absenteeism rate is 20%. Absenteeism means 3% to 4% production loss. From last 5-6 years tea plantation is facing huge amount of labour shortage and due to this labour shortage the bargaining capacity of the trade union has increased.⁶¹

⁶¹ Fieldnotes from interview with Zia Ul Alam, date and place

Housing (Zamin Patta)

While talking about housing condition he informed that most of the “Kucchās” (huts) are not provided by the management, so the workers have been compelled to construct their own houses. He also mentioned that in recent times tendency of migration has increased. Although labourers are migrating for better opportunities outside the plantation, workers try to keep at least one member working inside the tea estate in order to maintain the housing benefit and to have a permanent address. The fight for land rights is intrinsic to the survival of the workers in the tea plantations. Land deeds or entitlement to the land where workers currently reside will give them a sense of security and increase their bargaining power with the management. Once workers manage to get *Zamin patta* (land entitlement), it will guard them against eviction by the management, and will encourage them to claim their rights over the land they own. Moreover, they will no longer be compelled to work in the tea plantations. The educated children of tea garden workers can opt for other avenues of employment outside tea plantations. During fieldwork it was found that while workers’ parents and grandparents had worked in the tea plantations, their children wanted to pursue something outside of tea garden work.

Migration outside tea plantations

Josephina Tirkhi mentioned that the tendency of workers migrating outside tea plantations has increased in the recent times. Although labours are migrating for better payment outside the plantation, workers strive to keep at least one member working inside the tea estate in order to maintain the housing benefit. Many male workers of the Atal tea estate have left for Delhi to work as construction workers. She even mentioned that the children are no longer willing to work in the tea garden. Some are working in the BSF, bank and shopping malls. In spite of proper education the tribal children are deprived of proper jobs and they are forced to work in the tea gardens in order to run their families. Many workers are moving to Southern states like Kerala, to work as plantation workers as new plantation model is developing in the Southern states. Moreover, the daily wage in states like Kerala is higher for both, agricultural and non-agricultural work. Hence, out-migration of workers from tea plantations of North Bengal to Kerala has increased in the recent times. While some workers continue to work in other states for years, others prefer to return back to their native place after working for few months. Due to the increased tendency of out-migration, number of male workers working in the tea plantations is dwindling. Vijay Munda said that the management prefers male

workers, but nowadays male workers are migrating to other states for better job opportunities, so the number of female workers in the tea plantations is increasing day by day.

Conclusion

The post-independence plantation system was historically linked with the plantation regime of the colonial times in multiple ways. However, the system has undergone a change over the years in the labour process, and concomitantly in the relations of production. These changes had important consequences for women in the nature of tasks they performed, in the wage structure of the plantations, in the pattern of work and system of payment, structure of the plantation labour force and women's access to basic provisions and entitlements in the tea gardens. While under capitalism plantation labour showed some signs of relief from the earlier system of exploitation and control, they formed a bulk of the labour force that was the least developed in the country.

Women have come to form the backbone of the plantation economy. However, the basis on which the plantation system was established and the basis on which it exists today highlights a phenomenal degree of self and familial exploitation. Of all, it has particularly perpetuated the exploitation of its female labour force. While discrepancy in wages between men and women workers was done away with with the implementation of the Equal Remuneration Act, 1976, the concentration of more and more women in plantation work has resulted in keeping the general wage rate low. This has not only led to the exploitation of the self, but also larger familial structures.

The daily wage workers, among whom women predominate, are the lowest in the plantation hierarchy. The current wage rate in the tea plantations of North Bengal is Rs. 150 per day, which is much lower than the daily wage rate for skilled and unskilled work in agriculture in West Bengal. Our study revealed that the nature of women's work highlighted a particular kind of division of labour. While plucking was the most labour-intensive task in the tea plantations that was mostly done by women, the highest wages were earned by men who were mostly involved in indoor factory processing work along with the babus and the sardars. The incentive wage system called 'ticca' which encouraged women to earn extra cash was inherently exploitative in nature. These capitalist strategies extracted surplus value from the workers by forcing them to work for the entire stretch of the day under the pretext of earning extra income. In addition to the cash benefits, permanent workers were also entitled to certain

non-cash benefits in the tea plantations like housing, ration, medical facilities, firewood, tea leaves, bonus etc. as stipulated by the PLA, 1951. On the other hand temporary/non-workers was provided with only ration, firewood, tea leaves, and bonus. However, the ground reality was that even after sixty years of independence, even the positive mandates of the PLA were not implemented adequately. Moreover, following the implementation of the National Food Security Act, the provision of subsidised ration for tea garden workers was suspended since February 2016.

The tea plantation workers of North Bengal are fighting the demand for minimum wages and Zamin patta (land rights). A joint forum of trade unions has been formed that is waging the demand for minimum wages and an assessment of the value of traditional ration. Unions are also fighting for land deeds or Zamin patta so that workers can claim right over the land on which they reside. The fight for land rights is intrinsic to the struggle for minimum wages and decent living conditions. Owing to the inadequate living and working conditions in the tea plantations, a recent trend that is on the rise is the out-migration of workers from the tea gardens to the cities. Many male workers have moved to cities like Delhi to work as construction labourers. Many others have migrated to Kerala for higher wages and better living conditions. Tea plantations are a part of the organized sector, but organization of the workers under the banner of unions began fairly late. However, it is through organization and collective bargaining of the unions and the workers with the authorities that much of what was a part of the struggle has been achieved.

Chapter IV

Domestic workers in Delhi

Paid domestic work is an important sector of employment for women worldwide with an expansion in the size of the sector over the last three decades. The expansion and feminisation of domestic work is closely related and is associated with the growing economic inequality, resulting in the emergence of a servant employing class and large supply of poor women. The sector is known for unstable and insecure jobs, with no social security, notwithstanding sparse attempts to its regulation.

There are no reliable estimates on domestic workers, with various estimates on domestic workers highly contested⁶² - 4.75 million (Employment and unemployment NSS 61st round, 2004-05); 6.4 million (Census data 2001); and 90 million⁶³. The variation between the estimates suggests the informality and invisibility that embrace the sector. Under reporting arising out its 'non-work' status largely on account of it being an extension of household work is the primary issue. (Neetha 2009). Estimates based on NSS data suggest that the number of female domestic workers showed a huge increase during the period 1999-00 and 2004-05. The increase has been more in urban areas though rural areas also show considerable expansion. During 2004-05, of the 4.75 million workers employed by private households, 3.05 million were in urban areas indicating the prominence of 'urban' in domestic work⁶⁴. However, the latest rounds of NSS employment unemployment data (2009-10 and 2011-12) shows a substantial increase in the number of domestic workers in rural areas also.

⁶² See Box 2.2 in Domestic workers across the world: Global and regional statistics and the extent of legal protection, ILO, 2012 for a detailed discussion on discrepancies between various sources on the estimates of domestic workers.

⁶³ Estimate in Task Force Report, 2011.

⁶⁴ Part of this increase may have been due to more careful enumeration with greater sensitivity to women's work and recognition of this category of workers. Though, there has been no change in the survey methodology during this period, the category 'others' within the broad category of 'community and personal services' of which domestic work is one category show a decline. However, this cannot fully explain this increase, which is also documented in many micro studies.

There are different systems or types of domestic workers. The distinction between live-in and live out is the most important distinction in terms of employment relation. On the basis of nature of employment, domestic workers are broadly divided into two – part time and full time workers. Irrespective of the nature of employment, the employment and conditions of work are mostly informalised, with wages and working conditions varying considerably between workers in the same area or locality. Large populations of domestic workers are migrants from socially and economically vulnerable communities, and are closely related to the increased rural-urban migration for work. The complexity of work organization, non uniform wage rates, absence of defined work hours, incidence of violence and sexual harassment are concerns in the context of decent work. The illiteracy, low caste and migrant status of workers further intensify the issue (Neetha, 2009; ISST, 2009). Lack of any labour welfare measures (such as health insurance, maternity protection, old age security), and the absence of possibilities of alternative employment leave are major concerns. The personal relations governing the entry to work and conditions of work, and the nature of workplace being the four walls of the house makes this sector qualitatively different from other sectors of informal employment. Apart from these labour market issues, a critical factor in the understanding of the sector is the social understanding of household work that is performed by domestic workers and its under valuation in the larger social and economic level.

The sector is deprived of state regulation - be it in terms of labour legislations or social policies.

An Overview of Workers and Work Relations

The macro data for 2009-10 shows that a large proportion of domestic workers are between the ages of 31-40 (33.3 per cent) and 41-50 (22.6 per cent). The share of those above 50 years also stood higher at 17 per cent. Currently, married women account for 55 per cent of domestic workers, followed by widowed or divorced/separated women (30.4 per cent). The age and marital profile highlight that more than the unmarried and younger age cohorts it is older women (for whom possibly other employment opportunities are few) who take up domestic work. The naturalisation of house work in a women's life by marriage is also another factor that would explain the increased presence of older women in this sector.

Most domestic workers have little formal education. In 2009–10, 54 per cent were “illiterate,” and 83 per cent had less than middle level schooling, an indication of their poor socio-economic backgrounds. The most interesting pattern, evident in many studies, is the presence

of high proportions of women from all social groups, clearly bringing out the gendered understanding of this work more sharply than any other occupation. The category of OBC accounted for the highest proportion (32.4 per cent) followed by SC workers (31.2 per cent) and upper castes (28.4 pr cent). Across all castes, migrants account for the largest share of domestic workers, with the supply of workers maintained through a regular flow of distress migrants from varied and shifting rural origins (Neetha & Palriwala, 2011). In this context, the migration of tribal women to urban centres to take up domestic work is an important development that needs special mention. One of the preferences for tribal girls for domestic work, as established by many field studies, is the absence of caste informed notions of household work (Kasturi 1990; Neetha 2004).

Micro level studies show that irrespective of the profile of workers and nature of domestic work, the employment and conditions of work in paid domestic work are highly informal with low wages. The details of work, the wage structure and service packages are very complex and variable, making it problematic to arrive at a uniform wage rate for domestic work even for a specific locality (Neetha 2009). Wages and other conditions of work vary across region and even by locality in the same town/city. Apart from the variation across larger divisions (such as cook, cleaner, and baby-sitter), wage rates vary within categories depending on the nature of contract and other specificities of work and the worker. Further, personal relations are crucial in setting the terms of the contract – be it wages, leave or other entitlements.

Paid domestic work is different from other forms of paid work with very specific workplace characteristics, the content of which is both historically and culturally embedded. It undermines the notion of a division between the domestic sphere as private, separate from the public sphere. For example, the usual labour market distinction of live-out and full-time, which is purely based on daily working time, is often used to analyse employment relationships in domestic work resulting in ambiguities in legislative entitlements governing this sector. Part time domestic workers are distinct from part time workers in any other informal sector of employment. Most ‘part-timers’ undertake same or multiple/heterogeneous tasks in different households. While ‘part-time’ from the point of view of the employer, their aggregate daily hours of work across all employer households tend to be equal to or greater than that of a ‘full time’ worker in a factory or construction site (as defined by ‘normal working hours’ under labour law). Yet another specificity of the sector is that of live-in and live-out workers, which falls outside of any informal sector framework. Personal relations

govern entry into work and conditions of work, and the contours of the workplace being the four walls of the house makes this sector qualitatively different. One could add further dimensions that complicate the sector calling for a separate framework of analysis.

It is interesting to note that the feminised growth in paid domestic work has happened during a time when there is an overall decline in female employment in the country. This phenomenal increase in their number is indicative of larger social and economic transformations – the growth of a ‘domestic worker’ employing class and an uninterrupted supply of women who fill this demand. The social characteristics and work related commonalities shared between paid and unpaid domestic workers on the one hand and paid domestic workers and informal workers in other sectors on the other hand underscore the inextricable entanglement of gender with other axes of stratification, particularly class.

House Work and Paid Domestic Work

It is impossible to analyse the issues of domestic workers unless it is understood within the discussions and debates around gendering of housework and its undervaluation. Housework was institutionalised under capitalist development which not only created a sexual division of labour but also the overarching division between productive and unproductive labour. The debates around housework which emerged during the 1960s and 1970s at the international level, questioned the distinction between productive and unproductive labour which were used to give housework and thereby women a secondary status. The campaign around wages for housework though had created divisions within the movement; it helped in unpacking the ‘natural attribute factor’ associated with women and housework and in analysing women’s inferior status. The entry of housework into the realm of market and its gendering was beyond the scope of the debate as in a free play of market forces, though exploitations are natural, the shift to productive side of the economy was thought for women to be liberating.

There is no doubt that domestic labour and housework steered many discussions among feminists, however there has been little or no challenge to the basic division of labour and women continued to perform housework irrespective of their labour market status. The issue of child care however received some attention with the entry of women into the workforce which resulted in the varying state support for crèches leaving other chores within the family. House work and household relations remained outside the realm of critical engagement for a long time since the 1980s with the expansion of capitalist market and euphoria it generated on redefining gender relations. The promise of gender equality that the new economic order

propagated in the labour market was assumed to change gender relations in the household as well. The entry of women into productive economy aided by the internationalisation of market raised another set of issues. Housework remained with women irrespective of their participation in market economy which led to the concept of double burden of women, raising deeper issues in terms of analysing women's status. Alongside a new set of workers were mobilised, deeply rooted in social and regional inequalities at different levels, to take up paid domestic work. Thus, if some women were free or had less of domestic burden, it was not because of men sharing the work, but poorer women marked by regional and ethnic divisions entering paid domestic work. Thus, the only perspective within labour market analysis that highlighted housework and its gendering was in the context of the new international division of labour where race, class and gender intersect to form 'new' relations of care and dependency. Here again, feminisation of domestic work or care work was not framed within the perspective of housework and its gendering but as labour market distortions which called for interventions and regulations. Housework and its undervaluation did receive some attention in the context of poor wages and working conditions of domestic workers. The nature of work performed by domestic workers and the gender and class identity of workers drew attention to the unpaid domestic work performed by housewives. Thus the renewed focus on housework as it is visible today need to be located within these changes. Thus, the current discussions on housework and its undervaluation lies not on the unequal and gendered division of housework or the figure of housewife but largely on women 'outside' the household, the domestic worker.

Paid Domestic Work as Reproductive Labour

While in the 70s and 80s domestic labour signified housework, today care economy or reproductive work is the platform where both paid and unpaid discourses are framed. While it is absolutely vital to focus on care economy where domestic workers and their working conditions becomes one of the issues, it yet again evades the issue of sexual division of labour. Although, the focus on domestic workers in India has raised some interesting debates such as wages of domestic workers, which has uncovered a whole array of activities that housework encompasses, there has not been much progress on taking the debate further (Neetha 2013).

The sector now is largely a female dominated one, and those who engage are not recognized as workers or at the margins. Women's disproportionate presence and their non-recognition

as workers is rooted in the work they perform which is housework. The undervaluation of paid domestic housework comes from the nature of work that the workers perform – value is not ascribed to women’s work in their homes, and by extension, even paid work in other’s homes is not given any value or regarded as work. There is another layer to this undervaluation which comes from the profile of workers - poor, migrant and lower caste women. It is also understood as unskilled, a natural outcome which is part of the socialization process, taught by other women in the home and are perceived to be innate. Domestic work includes diverse tasks and it is impossible to separate the different components of a given task as it comprises manual, mental and emotional aspects.

Domestic work has been analysed from different perspectives by different researchers. While ethnographical studies bring in the richness of social relations and everyday life, the survey based work-centric analysis provide insights into the labour market nuances of this employment. These studies have provided rich information on the personal, cultural, social and economic dimensions of domestic work. The employer-employee relationship is a complex one and is viewed as one of domination, dependence and inequality. Also, this is an area of work where the employer and the employee are mostly females. As a home is the site of work, relations between employer and employee are often not limited to work but spill over as larger support systems.

Domestic work spheres, the homes of employers, we now know, are not spaces of love and sympathy but locations of bargaining and negotiations. Marked by exploitative relations, intimacy and shared gender concerns sometimes coincide. Interactions between social and economic groups do not always undermine, but often enhance the boundaries that divide them, especially when it is a highly privatised space. Thus, the institution of paid domestic work is often framed as women against women, around women’s world of reproductive labour.

Most of the existing discussions around domestic work have been from the perspective of labour rights. While this is certainly an important dimension, the fact that paid domestic work is taken as an extension of housework, calls for locating the undervaluation and poor status of domestic workers within the devaluation of house work. Domestic work shows us how paid work for women (which was assumed to liberate women from housework eventually leading to the sharing of housework between men and women) could be woven around housework, challenging some of the foundations of women’s liberation. The demand for

wages for housework was in no way a demand for actual wages but was more an expression of the need to reorient society by transforming the image of the 'housewife', the central focus in the abolition of patriarchy. In this sense, a highly feminised paid domestic workforce speaks to the failure of the women's movement in attaining a redistribution of house work between men and women. House work is displaced for a section of women, not to men but to other women who are drawn from socially and economically disadvantaged groups. Women's emancipation from house work thus, still remains as a challenge with newer dimensions.

Recognition of domestic work as any form of paid work

The most critical issue that have animated the discussions on paid domestic work which is also the root cause of many of the specific issues of the sector is the lack of its recognition as any form of paid work. With the ILO convention on Domestic Work and the discussions both theoretical and empirical from an academic and policy oriented perspectives, paid domestic work is now accepted as one of the informal sector occupations. Though half the battle seems to have won with the passing of the ILO convention and the related discussions around it, the larger issue of undervaluation of domestic work still remains. The sustained non-recognition of the economic value of housework though underlie the larger neglect of the sector and its poor status, the battle around housework and its gendering being a structural issue is not going to be resolved in the immediate. In such a context, the discussions on non-recognition and undervaluation needs to be strategically taken up as an issue of labour market discrimination and sex-based segmentation where the opposition to its demand will not be as fierce or contested as in the case of house work. This is not to suggest a total delink from housework debates but reformulating the debate on the undervaluation of paid domestic work within the perspective of the market and in the language of the market. Perhaps the market logic may also help in taking the debate around housework forward in the contemporary context.

One of the critical issues that confront the sector both in terms of organising and regulation is the definition of domestic work. What constitutes domestic work or domestic workers is still an area of conflict and diverse interest persists. While policy formulations and data collection/generation efforts are for an employment relationship driven approach, activists and academicians with labour as well as feminists orientations are guided by the profile of the workers and their specific employment issues in defining the sector. ILO's definition of

domestic work clearly brings the policy formulation oriented definition where a “domestic worker” is defined as “any person engaged in domestic work within an employment relationship”. Domestic work thus may involve a range of tasks, including cooking, cleaning the house, washing and ironing the laundry, general housework, looking after children, the elderly or persons with disabilities, as well as maintaining the garden, guarding the house premises, and driving the family care. (Domestic Workers Convention 2011 (No.189), Article 1)

The employment relation based definition as above however, is not shared by many activists as it is assumed to hamper homogeneity in the profile of domestic workers and their interests. The understanding of domestic work among activists and organisers of domestic workers in the national contexts is more or less precise and uniform. Domestic work is commonly defined as house work performed for the private household such as housekeeping (cleaning tasks & cooking), child care and other personal care and all workers irrespective of the nature of engagement -part time, full time, live-in or live out workers are domestic workers. The other categories of domestic workers such as gardeners, personal drivers and ‘watchmen’/guards are not treated as domestic workers in this understanding as their profile and employment relation differ substantially from that of the larger category of workers, who undertake routine household tasks as has been discussed in the paper on Minimum Wages.

Given the current scenario with an overwhelming number of women from marginalised communities taking up paid domestic work, the policy oriented definition of domestic work is bound to create more issues than what it could possibly resolve. Heterogeneity in the profile and issues of workers is bound to make all claims making difficult as wages; working conditions and extent of patronage based relationship for each of the categories are different. Given the diversity across various categories of workers, no policy intervention could address all workers and this would adversely affect attempts at regulating the sector as well as organising workers. In such a context, it is imperative to acknowledge the complexities of the sector and evolve an acceptable and workable definition that could sustain the current interests and momentum.

Formal Employment Contracts versus Informal Work Relations

The language of employment contract dominates the discussion on working conditions and employment relations in the sector. The employer – employee relationship that characterise most domestic work relationship is one of wage labour and symbolic contract, with various

levels of personal relationship existing side by side. Whatever be the language of formalisation of employment and the practise of it, one has to acknowledge the anxiety that is building up in the sector with increased attention on rights of workers. The increasing awareness among workers about their rights, their membership in unions/associations and so on are not easily accepted by employers as has been discussed in the papers by George and Moghe. On the other hand, too much focus on wage labour relationship or formal contracts brings to the forefront the economic vulnerability of domestic workers of which the workers are sometimes more concerned about. Extra wage benefits are critical to the survival of these workers which explains the prevalence and continuation of non-wage relationships in a big way. Thus domestic workers may support practises that are rooted in feudal patronage based employee-employer relations which entitles them to additional payment in kind, access to loans, used clothes, utensils, appliances and gifts on festivals. Further, relations between employer and employee are often not limited to work and do spill over to personal spheres such as support network for domestic violence and so on.

It is difficult to replace the patronage based practises at one go, though workers themselves are aware of the issues of informal relations. Unless support mechanisms and welfare provisions are brought in gradually to replace their dependence on employers, it is impossible to break away from all patronage based relations. In an overall context of employment crisis, workers do have to ensure employment and this is sometimes ensured at the expenses of lower wages or poor conditions of work. There is a need to acknowledge these larger issues in all the interventions in the sector, be it formulating policies/regulations or organising workers.

Organising issues – all women, paid domestic work

The prevalence of personal relations and the near impossibility of addressing the diverse economic and social needs of the workers by any organisation underline the limitations of unionization in the sector apart from the limitation that private households as a workplace would raise in organizing workers. The continued prevalence of patronage makes workers less likely to identify themselves as workers and organise on a work-based identity. Even when they are members of unions their engagement with issues and the extent of their commitment with the cause of workers' rights are limited. This is often accentuated due to the fact that the organisations that they are part are seen as external to their life and most organisations that represent workers have their origins in the efforts of people who have a

different class background. Many unions though after years of working among domestic workers still are run effectively by non-workers and workers see themselves as beneficiaries like in any other social security programmes. The disengagement by many of the organisations, sometimes complete or at varying levels, with work place issues and conditions of work have added to the existing disassociation of domestic workers from the larger debates on worker's rights. Though the inclusion of domestic workers in many existing and new welfare programmes/schemes have attracted traditional trade unions into the sector, their operations are also largely limited to enrolment and provisioning of such schemes. On the other hand, NGOs are now compelled to get their association of domestic workers as a trade union as in many states only registered unions can only register workers in the state sponsored welfare schemes. The change in position of the central leadership of NDWM on the demand for registering unions that came from many states such as Karnataka, Andhra Pradesh, Kerala and Tamil Nadu needs to be seen in this background. This fear that workers could leave organisations as they cannot represent or register workers have led to registration of many unions in different states since last 10 years. All these developments do suggest the broad shifts that are happening in the sector which will surely alter the organising question in the coming years.

While at the state level many organisations are caught up with issuing identity cards and provisioning social security or welfare schemes, at the national level the prime engagement was on the issue of a national policy on domestic workers. Though some groups also have allied with Dalit organisations and women's groups on specific issues, there is a lack of effective alliance which has contributed negatively to them being an effective pressure group. The thrust on welfare schemes at the ground level and policy at the national level with poor alliances or networking have negatively affected the formulation and development of a collective consciousness among the workers, which is essential for organisational efforts to sustain. The discussions around the draft national policy and the various stages of its evolution to the present form and the uncertainty that surrounds the bill even now are all indicative of the poor organisational base of the sector. Though there are many changes taking place at the organisational level, creating class consciousness and identity among the workers would remain a challenge given the intersectionality of the sector with other axes of inequalities such as gender and caste.

State Policy and Regulation

On the issue of state policy and legal regulation, various scholars both in the field of feminist studies and labour studies have questioned the capacity of law to act as a transformatory instrument apart from its susceptibility to multiple interpretations. However, limitations within law or failure of its implementation cannot undermine the importance of legislations and regulations. Legislation around domestic work and workers, whether by amending or adding to existing legal provisions or through formulating new laws, are required which can give voice to this section of workers. Claiming making and claiming due rights is an effective way of collectivising the hugely spread and diverse set of workers. This can give visibility to the workers alongside providing the required impetus for organising workers in the sector.

As discussed earlier some steps have been taken by the government both at the national and state levels to protect the rights which are largely haphazard and arbitrary. Further, like in the case of any other informal sector, implementation of regulations is a huge issue which gets further worsened by the social prejudices around domestic work and the workers. The latest intervention in the sector at the national level, the national policy on domestic work which was drafted in 2012 was revised in 2015 by the Ministry of Labour and Employment. The fate of the policy is unclear⁶⁵ and is yet to be made available to the larger public. With the changed approach to employment relations and labour regulations that characterise current governance frameworks, nothing much could be expected in terms of protecting the rights of these workers. In such a context, the best strategy seems to be of getting domestic workers included under the existing labour laws, whatever may be its limitations. This would make them at least on par with other informal workers in the country.

Field data: Social and demographic profile of the surveyed domestic workers

Field study was conducted in Delhi, Jharkhand, and West Bengal to identify migrants' issues, concerns, and relationship with labour law. In Delhi, the field work comprised of a preliminary survey of 70 migrant domestic workers and 50 construction workers, some of whom were from Jharkhand and West Bengal. Some more qualitative interviews with

⁶⁵ Labour Minister Bandaru Dattatreya said in a written reply to Rajya Sabha in March 2016 that the National Policy on Domestic Workers is under active consideration of the government.

migrant domestic workers have also been conducted. For the purpose of comparative analysis, the data is divided between live-out and live-in domestic workers in Delhi.

Studies have noted that rural-urban migration is the fastest growing form of migration in India with Delhi (the others being Gujarat and Maharashtra) as an important destinations for inter-state migration (Deshingkar and Akter 2009). In our study, it is significant to highlight that the highest number of live-out workers (39.3%) have their origins in Uttar Pradesh, followed by Bihar (21.3%), and Madras (14.8%). Only 11.5 percent were born in Delhi. A smaller number migrated from other states like West Bengal, Nepal, Jharkhand, and Chennai. Moreover, it is also interesting to note that the largest share (85.2%) of live-out workers migrated from rural to urban areas. Further, among live-in workers it was found that they were distributed equally across states. Data showed that 12.5 percent of the full-time workers had their origins in Assam, Bangladesh, Bihar, Jharkhand, Maharashtra, Odisha, and West Bengal. As far as the area of birth was concerned, Table 4 shows that 50 percent of the full-time workers were from urban and rural areas respectively.

The migrant workers had to find a place to stay in the city of employment. Most of the workers settled in shanties and squatter settlements like slums in the new cities. In the absence of an active network of family and friends in the unknown city, it became quite difficult for the workers to arrange for accommodation on their own. Since majority of these workers live-out in the slum areas, they also face displacement within the city.

Table 1: Place of origin (Live-out)

State	Frequency	Percent
Bihar	13	21.3
Chennai	1	1.6
Delhi	7	11.5
Jharkhand	1	1.6
Madras	9	14.8
Nepal	2	3.3
Tamil Nadu	1	1.6
Uttar Pradesh	24	39.3
West Bengal	3	4.9
Total	61	100.0

Source: Field Survey

Table 2: Place of origin (Live-in)

State	Frequency	Percent
Missing	1	12.5
Assam	1	12.5
Bangladesh	1	12.5
Bihar	1	12.5
Jharkhand	1	12.5
Maharashtra	1	12.5
Odisha	1	12.5
West Bengal	1	12.5
Total	8	100.0

Source: Field Survey

Table 3: Area of birth (live-out)

Area	Frequency	Percent
Rural	52	85.2
Urban	8	13.1
Total	60	98.4
Missing	1	1.6
Total	61	100.0

Source: Field Survey

Table 4: Area of birth (live-in)

	Frequency	Percent
Rural	4	50.0
Urban	4	50.0
Total	8	100.0

Source: Field Survey

Migration in India is mostly influenced by social structures and patterns of development. Of our sample, 44.3 percent (Table 3) of the live-out women workers mentioned that they migrated because of their husbands. They worked as domestic helps in the new city in order to supplement their husbands' income. Only 14.8 percent of the workers informed that they migrated in order to search for alternative sources of employment. Table 6 shows that all live-in domestic workers have migrated for the search of employment opportunities in the new city. Studies have shown that domestic work is among the most easily available employment for migrants (Neetha 2004, Kaur 2006). They point out that women enter domestic work as it

requires no specific skills, is easily accessible and their local network assists them in finding this work. Data reports that 11.5 percent of the women who had migrated have gone missing.

Table 5: Reasons for migration (live-out)

Reasons	Frequency	Percent
Missing	7	11.5
Employment	9	14.8
Marriage	6	9.8
With husband	27	44.3
With family	12	19.7
Total	61	100.0

Source: Field Survey

Table 6: Reasons for migration (live-in)

Reason	Frequency	Percent
Employment	8	100.0

Source: Field Survey

Tables 7, 8, 9 and 10 indicate the current wage for different tasks performed by live-out domestic workers. The most common form of domestic work done by live-out workers or those who live out are sweeping, mopping, cleaning utensils, washing clothes, and cooking. It is interesting to note that the wage rate for each of these tasks is different with cooking being the most attractive option. Table 3 shows that out of the sample studied, 67.2 percent of the domestic workers get wages between 501-1000 for the task of cleaning utensils. Table 4 indicates that 69 percent of the workers earn somewhere between 501-1000 for sweeping and mopping. Table 5 shows that 26.2 percent of the workers get wages between 501-1000 for washing clothes, and 14.8 percent of the workers earn between 1501-2000 for cooking. It is clear from the data that amongst all kinds of domestic work, cooking was by far the highest paid task. The average current wage rate for cooking was Rs. 1916.67. On the other hand, the average current wage rate for cleaning utensils was Rs. 664.15, for sweeping and mopping it was Rs. 818.87, and for washing clothes it was Rs. 646.15. Like other informal sectors, there was no minimum wage for domestic work. The wages were fixed by the employers depending on the market rate of the locality in which they lived. Therefore, wage rates vary depending on the nature of the task and the socio-economic profile of the employers. Thus, we see that the average wage rate for cooking was the highest and that for washing clothes was the lowest. The tables below clearly substantiate the argument. This shows how the

organizing principles of work in the households created a hierarchy between different kinds of tasks performed by the domestic workers. This resulted in women's self-exploitation of their labour through the arbitrary wage structure.

Table 7: Current wage for cleaning utensils (live-out)

Income in Rs	Frequency	Percent
below 500	12	19.7
501-1000	41	67.2
Missing	8	13.1
Total	61	100.0

Source: Field Survey

Table 8: Current wage of sweeping and mopping (live-out)

Income in Rs	Frequency	Percent
below 500	6	9.8
501-1000	42	68.9
1001-1500	3	4.9
1501-2000	2	3.3
Missing	8	13.1
Total	61	100.0

Source: Field Survey

Table 9: Current wage for washing clothes (live-out)

Income in Rs	Frequency	Percent
below 500	22	36.1
501-1000	16	26.2
More than 1000	1	1.6
Missing	22	36.1
Total	61	100.0

Source: Field Survey

Table 10: Current wage for cooking (live-out)

Income in Rs	Frequency	Percent
1000 and below	1	1.6
1001-1500	7	11.5
1501-2000	9	14.8
More than 2000	1	1.6
Missing Value	43	70.5
Total	61	100.0

Source: Field Survey

Table 11 shows the total individual monthly income from live-out domestic work. 39.3 percent of the domestic workers earn monthly income between Rs. 5001-8000. A little more than half (52.4%) of the workers earn monthly income between Rs. 1001-5000. Only 3.3 percent of the workers earn more than Rs.8000 monthly. This data also indicates contribution of women’s income to the household economy. While women earn in order to supplement their husband’s income, a major portion of their income gets spent on household expenditure. Such a situation highlights the hardships that women face in running the household.

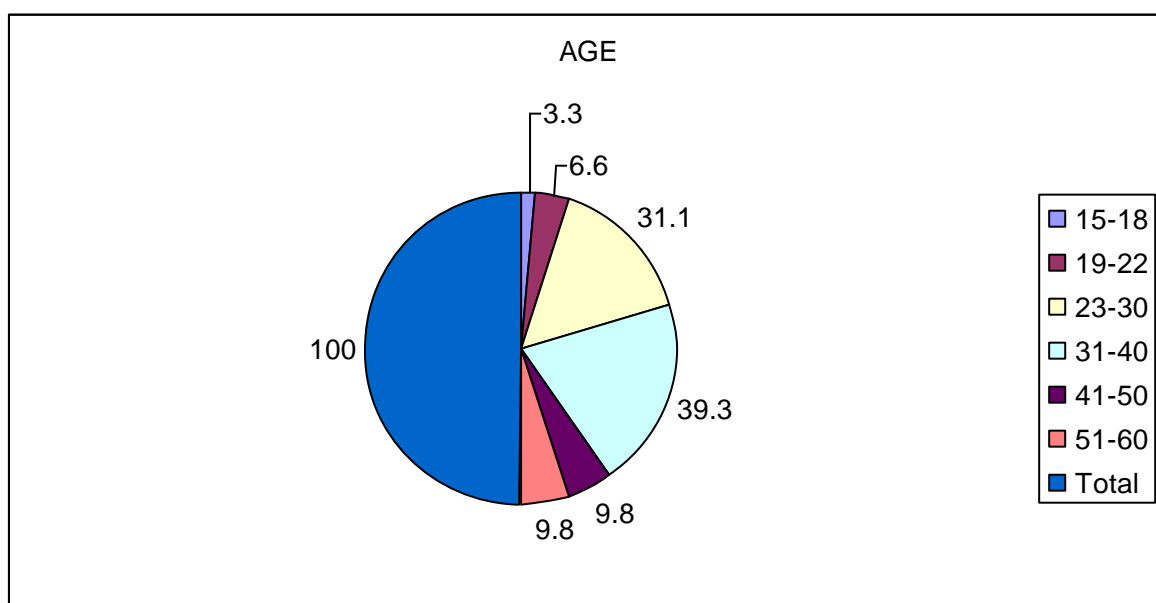
Table 11: Total individual monthly income from domestic work (live-out)

Amount (Rs.)	Frequency	Percent
below 1000	3	4.9
1001-3000	16	26.2
3001-5000	16	26.2
5001-8000	24	39.3
More than 8000	2	3.3
Total	61	100.0

Source: Field Survey

With respect to the age of domestic workers in our sample, it was found that the largest share (39.3%) belonged to the reproductive age group, followed by 31.1 percent of the workers in the age group between 23-30 years. This meant that a lot of the women workers had to carry the double burden of coping with childcare along with domestic work. Only 9.8 percent of the workers in the age group of 41-50 and 51-60 years worked as domestic helps. This indicates that older women for the lack of better options continued to do domestic work.

Figure 1: Age of domestic workers



In our sample among live-out domestic workers we see that, majority (78.7%) of the workers were married at the time of the survey (Figure 2). 8.2 percent of the workers were never married, 1.6 percent of the workers were divorced, another 1.6 percent of the workers were separated and 8.2 percent of the workers were widowed. Among live-in domestic workers, it is interesting to note that majority (37.5%) of the domestic workers were widowed. This was in complete contrast to live-out domestic workers. This is indicative of the fact that since widows were single women, they preferred living with the employer’s family in order to escape the difficult conditions of settling in a new city. Although live-in workers were provided with a living space along with other basic amenities, they were expected to be on call for most of the day. As a result, they did not have fixed working hours for themselves. Further, 25 percent of the workers in the sample were married, followed by the rest 25 percent who were single. Only 12.5 percent of the workers were separated.

Studies show that the last three decades have witnessed a change in the age profile of domestic workers. In the 1970s, most women domestic workers were household heads – widows, deserted and older women. The situation began to change in the 1980s with increase in migration of families and also of single women (Banerjee 1982, 1992). In their analysis of NSSO data between 1999 and 2005, Palriwala and Neetha (2009) note that the number of widows and separated women in domestic work has increased (Jagori 2014: 17). In our study also while 19.6 percent of the live-out workers fell in this category, the largest share (75%) of the live-in workers fell in this category.

Figure 2: Marital status of domestic workers (Live-out)

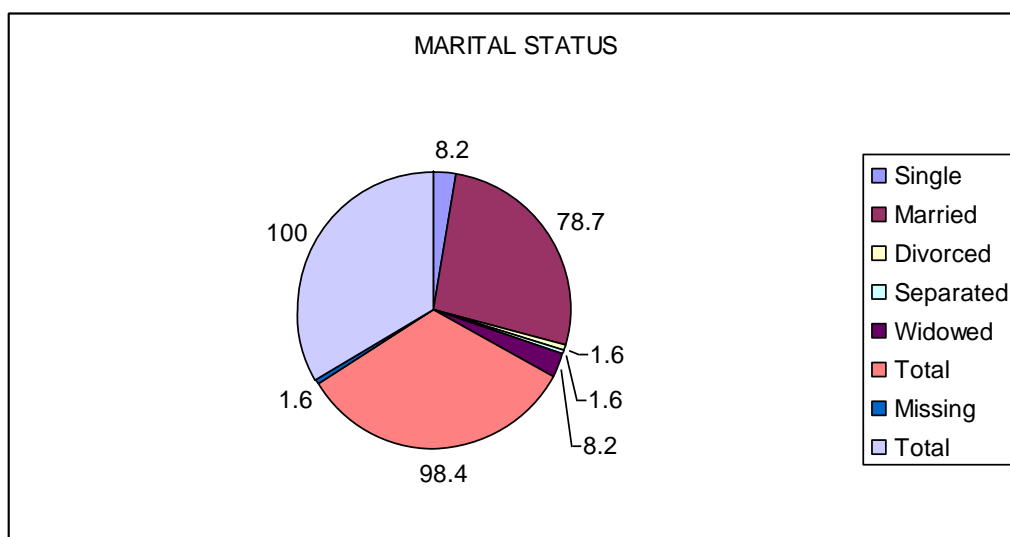


Table 12: Marital status (Live-in)

	Frequency	Percent
Single	2	25.0
Married	2	25.0
Separated	1	12.5
Widowed	3	37.5
Total	8	100.0

Source: Field Survey

Figure 3 shows the educational levels of live-out domestic workers. While a majority (70.5%) of the workers were illiterate, only 13.1 percent of the workers studied till primary school and another 13.1 percent of the workers reached till middle school after which they dropped out. Majority of those who dropped out of school were girls, who were later forced to take up domestic work in order to earn their livelihoods. Table 13 shows that 75 percent of the live-in workers did not go to school, while only 25 percent managed to study till primary.

Figure 3: Educational status of domestic workers (Live-out)

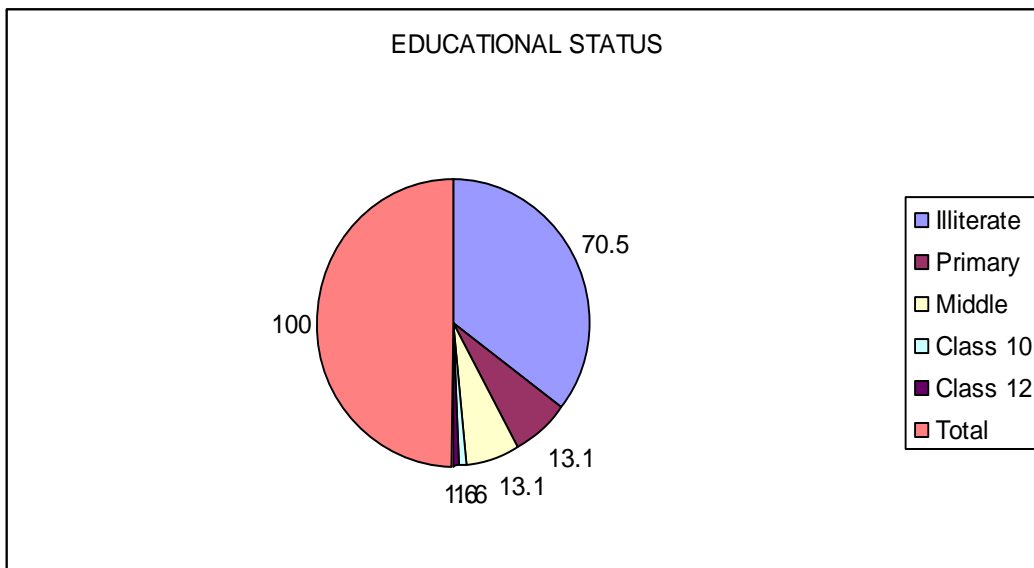


Table 13: Educational status (Live-in)

	Frequency	Percent
Illiterate	6	75.0
Primary	2	25.0
Total	8	100.0

Source: Field Survey

Majority (80.3 %) of the live-out workers in our sample were Hindus, followed by 19.7 percent of the workers who were Muslims (Figure 4). Table 14 shows a similar pattern with

the majority (75%) of the live-in workers being Hindus, followed by 12.5 percent who were Muslims and Christians respectively.

Figure 5 shows that the highest, 31.1 percent of the live-out workers belonged to scheduled castes, followed by 26.2 percent of the workers in the OBC category, and only 14.8 percent of the workers in the general category. Table 15 shows that 25 percent of the live-in domestic workers belonged to the general category. Whereas, 12.5 percent of the workers belonged to SC, ST, and OBC categories respectively. Highest number of live-in domestic workers belonging to the general category is also indicative of the fact that traditionally, upper caste Hindu households did not allow lower caste Hindus and Muslims to enter their houses, especially their kitchens. As Palriwala and Neetha (2009) argue, in recent times employers have not followed this rigidly as the supply of higher caste domestic workers has not kept up with their demand. Various studies indicate that schedule castes workers (mostly migrants to the city) work as domestic workers. Studies have noted that some do not enter domestic work in their place of origin due to their higher caste status, but do so elsewhere. Similarly, low castes would not find employment in their place of origin but less strict caste norms in bigger cities would provide them with employment opportunities (Kasturi 1990; Raghuram 2001; Neetha 2003, cf. Jagori 2014).

Figure 4: Religion of domestic workers (Live-out)

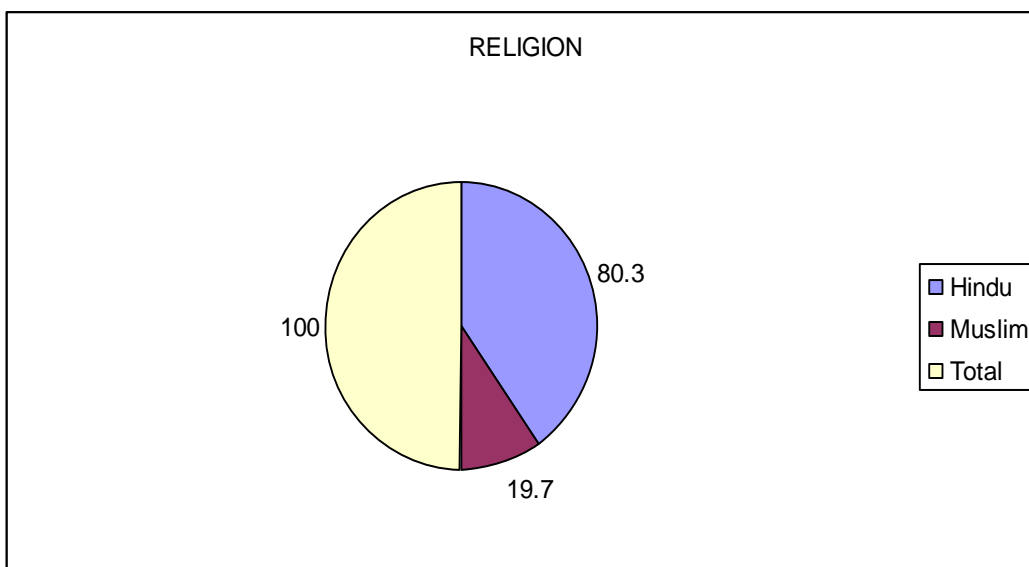


Table 14: Religion (Live-in)

Religion	Frequency	Percent
Christian	1	12.5
Hindu	6	75.0
Muslim	1	12.5
Total	8	100.0

Source: Field Survey

Figure 5: Social group of domestic workers (live-out)

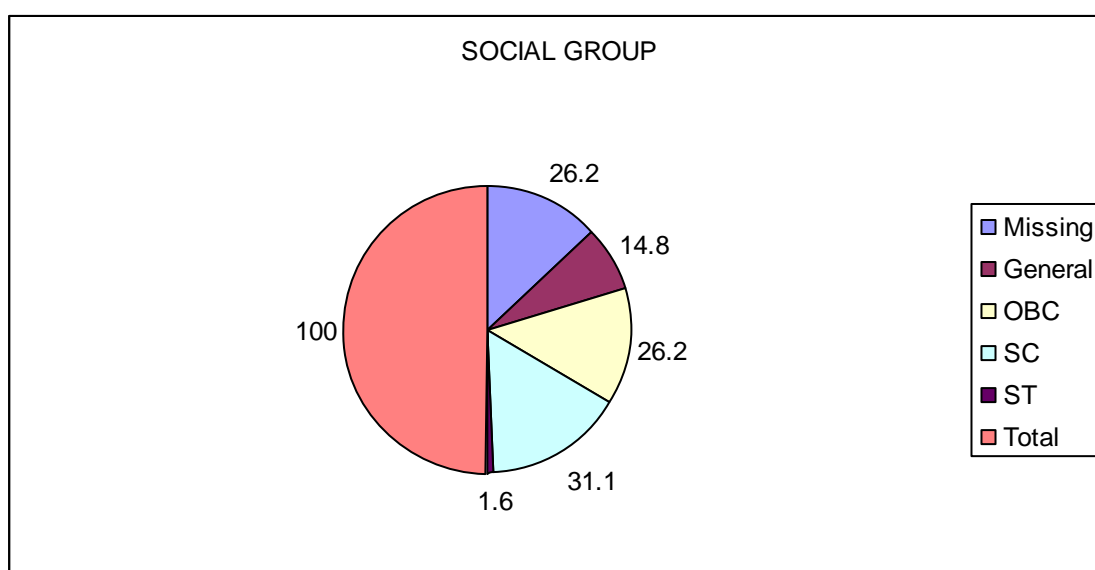


Table 15: Social group

	Frequency	Percent
General	2	25.0
OBC	1	12.5
SC	1	12.5
ST	1	12.5
Total	5	62.5
Missing	3	37.5
Total	8	100.0

Source: Field Survey

In our study, 59 percent of the live-out domestic workers had their own bank accounts whereas; only 12.5 percent of the live-in workers had their own bank accounts. This shows that not all women workers had the awareness of opening bank accounts and saving their

hard earned money. This was especially true for live-in workers who did not feel the need to save money in the banks, instead preferred keeping the money with them. When they visited their families in their native villages, they would take the saved money with them. At times, domestic workers would also send some portion of their income back home for their kids and families.

Table 16: Bank account (Live-out)

	Frequency	Percent
Yes	36	59.0
No	25	41.0
Total	61	100.0

Source: Field Survey

Table 17: Bank account (Live-in)

	Frequency	Percent
Yes	1	12.5
No	7	87.5
Total	8	100.0

Source: Field Survey

Summing Up

Our study highlighted different dimensions and aspects of domestic work. Even though domestic work is considered important, at the same time it is economically undervalued. Domestic work is seen as undignified work which is reflected in the working and living conditions of the workers. Moreover, the migrant status of the women workers adds to their woes which make their condition even more vulnerable to the market forces. These women are placed low in the social hierarchy because of the very little value that is ascribed to their work. Since domestic work is seen as an extension of unpaid housework, it does not find a place in the legal definition of ‘work’. Although it is easier for migrant women to get absorbed in domestic work, they also themselves feel that their work is lowly and unskilled. Women perform a gamut of tasks under domestic work, but cooking happens to attract the highest wages. Other tasks such as cleaning utensils, sweeping and mopping, washing clothes and toilets are placed lowest in the social ladder. This was also confirmed in our study of domestic workers in Delhi. The study also highlighted an increasing incidence of single women (unmarried, separated, divorced, and widowed) migrating for domestic work. In case of women migrant workers, the risks involved in migration for domestic work are manifold. Threat of sexual harassment, violence and abuse looms large, which is an indirect attack on

their citizenship rights. Moreover, most of the migrant workers settle in slum like settlements. As a result, in the constantly changing urban scenario they fall victims to eviction, displacement, etc which affects their lives and livelihoods. Since domestic work is part of the unorganized/informal sector, women face discrimination in terms of non-recognition as workers, inequality/inconsistency in wages, lack of social security benefits, lack of job security, and denial of basic rights.

Since domestic work is not recognised as ‘work’ by the Indian government and women involved in domestic work as contributing to the country’s economy, trade unions and organizations working with domestic workers have been pressurising the government for a shift in its policy on domestic work. Discussion on legislations has been going on in the country since the 1980s to protect the rights and interests of domestic workers. However, domestic workers have been excluded from the Minimum Wages schedule and the Maternity Benefit Act, 1961, though some states have decided on minimum wages.

Thus, the interest on domestic workers and their issues and various studies theoretical or empirical from an academic and policy oriented perspective points to the complicated terrain and uncharted territory that the discourse has moved. However, many issues that are fundamental to the sector still remain unresolved or are at different levels of negotiations/acceptance fitting to the extreme levels of informality that characterise the sector.

Chapter V

Conclusion and Postscript

This study investigates the elements and structures of labour laws in India with a focus on the aspects that are particularly related to migrant workers, from a gender perspective. It follows up a broader analysis of the rapidly changing landscape of labour laws with a set of field studies that describe the experiences and conditions of migrant women workers in construction, brick kilns and domestic work in Jharkhand and immigrant tea plantation workers in north Bengal. These are supplemented with a survey of domestic workers in Delhi. The workers in Jharkhand and north Bengal were predominantly of tribal origin, while in Delhi the surveyed workers were of mixed social origin.

In its discussion on labour laws, past, present and future, the study points to the problems of absence of gender in older corpus of laws dealing with migrant workers, bonded labour, and contract labour. In discussing the paradox of an increased rhetorical focus on unorganized workers in an era where the labour law reform agenda of neo-liberal policies is pressing for the dismantling of several established rights and protections of organized labour. It suggests that in such a context, the ILO's focus on formalisation of informal employment contracts/relations may not improve the situation of unorganized workers as expected.

The discussion highlights the lack of implementation of labour laws such as the 1996 law for construction workers, and discusses the casual and flip flop policy of the Government regarding commitments to domestic workers. An examination of how migrant workers and women figure in the ongoing amalgamation of labour laws into codes and labour laws suggests that the flattening out of historically evolved provisions in labour laws, with their socially grounded specificities and variations, through consolidation within a more simplified frame is leading to erosion of benefits that have been gained by some sections of workers without adding to the benefits of others. In reviewing the tendency to structurally detach workplace laws for women from labour law frameworks, the study points to new challenges for women workers and trade unions that are still to be recognized.

The field studies in Jharkhand and Delhi showed that workers were mostly unaware of the labour laws that applied to them. This was true for construction workers for whom a law has

been on the statute book since 1996 as well as domestic workers for whom there is as yet no law, but for whom policy and law making processes are ongoing. The lives and conditions of work of construction workers, domestic workers, and brick kiln workers were thus shown to have been unmediated by labour law and determined by their economic and social location within a set of production relations determined by market forces. The studies document the compulsions to migrate in conditions of distress and economic hardship. In migrant occupations, earnings were indeed somewhat higher, but distress and economic hardship appeared to be compounded by onerous labour demands and long hours of work. Further, as it emerged in the Jharkhand field work, no one had any ration card for the city where they were working. Aadhar and voter ids also bore their village address. Importantly, none of the women had gas stove for cooking food. Since they were migrants to Ranchi district, they were not able to avail gas stove under the Ujjawala Scheme. As such in migrating for work, the women were losing out on entitlements that are framed for sedentary rather than migrant populations.

Thus the field studies confirm what is well known and established regarding a generalized failure of labour laws to mitigate such conditions of distress and hardship of the migrant, the poor, and the unorganised among workers and a loss of facilities that would be their right as citizens. The labour laws that have been specifically enacted to provide for social security to unorganized workers in general, and construction workers in particular were found to have left these workers untouched. It was not just that workers were unaware of the laws that applied to them. Even those who were involved in organising and leading workers expressed their inability to cope with the cumbersome forms and rejections involved in registering workers. An important suggestion that came from the women workers themselves was the holding of labour camps at the crossings where construction workers gathered in search of work (*labour mandis*) and in the slum colonies where they resided.

With reference to women working in construction and brick kilns, the field study in Jharkhand also showed that a) the least skilled or rather unskilled jobs were reserved for women, b) a consistent pattern of the wage rate being higher for the men, and c) that women were assigned the most physically excruciating task, while men do the technical task that aren't as physically demanding. More physically arduous work is generally classified as unskilled and wage levels are fixed around hierarchies of skills, which is a premise that is common to social and legal perceptions. Even though the women did not accept anything less

than the market rate, they were not aware on what basis were the wages calculated and agreed upon. Payment on piece-rate basis seemed like an opportunity for women migrant workers to earn extra cash. Piece-rate work resulted in women's self-exploitation of their labour as women were forced to carry as many bricks as possible in order to earn more money to fulfil basic needs. Even though the women clearly understood the nature and the extent of injustice meted out to them in terms of payment of wages, conditions of work, and living conditions, they did not know how and where to address the problem. Some thinking is indeed required around the need to address the arduous nature of the labour performed by women. Special compensatory allowances for arduous labour is perhaps one of the ways to mitigate gender based wage inequalities in manual labour based occupations.

Surprisingly construction and brick kiln workers reported more cases of sexual harassment than domestic workers. The tragedy was that the workers themselves put forward the idea that in the face of the daily struggle of looking for work, many women settle with sexual advances in exchange of regular employment by the Masons. Further, all workers said that the police and other government authorities were hostile to women making complaints. The indifferent attitude of the authorities was particularly highlighted when a mason who had raped and slit the throat of a young tribal girl was back on the worksite within a few days. Verbal and physical sexual abuse, taunts of young women, and physical advances at construction work sites emerged as a routine experience.

Domestic workers, on the other hand, emphasized abuse and harassment that were not necessarily sexual in nature. Unlike other forms of labour market activity, it is important to bear in mind that the situation of domestic workers is unique since their work takes place within the household. Recognizing the household as a place of work remains a challenge that is yet to find due place in labour law. In addition, mechanisms for implementation of labour laws like minimum wages and social policies that may be applicable to domestic workers in some states remain important challenges for the future, as do the regulation of working hours, provision for leave, social security, etc. that still need to be defined as rights of domestic workers in law.

In the tea plantations of North Bengal, on the other hand, the law has been a more significant player. Here, both the permanent and impermanent daily wage workers who worked in the tea plantations should perhaps be classified as an 'immigrant' rather than 'migrant' population. Unlike workers employed in other capitalist industries across India, which

employs migrant workers who may retain roots in their native villages, the unique characteristic of the plantation labour force was that they are a permanently settled labour force that is detached from their area of origin as well as the local social milieu around the plantations. Women were brought into the capitalist enterprise of plantations in order to both labour and sustain the family unit away from home as well as reproduce a workforce that was permanently tied to the plantations.

At the same time, while construction, brick kiln and domestic work are considered to be part of the unorganized or informal sector, because of the Plantation Labour Act, 1951, tea plantations are considered to be a part of the organized sector. The result of this differentiation has an impact on the women workers working in each of these sectors of the economy. PLA, 1951 being a sector specific law, fully mandated provision for the welfare of plantation labour by their employers, including rations, medical care and schools, housing, firewood, tea leaves, bonus, etc. While construction, brick kiln and domestic workers are largely outside the frame of unions, tea workers have been fairly organized under the banner of different unions. What the field study found was that after a long period of fissures and disunities among plantation workers' unions, a new phase seems to have been inaugurated by several unions coming together on a common charter of demands.

Union leaders pointed out that demands of plantation workers over several decades revolved around wages and facilities to be provided in the plantations. Recently however, there has been a shift towards including what one union leader termed an agenda for *emancipation* through demand for allotment of housing pattas to plantation workers. Why this is important is because generations of plantation workers, who have long lost connections and ties with their earlier homelands have remained condemned to labour only in the plantations because they have no other place to stay. Thus, despite having a law that granted them some rights and facilities (however poor they might have been), plantation labour has retained the characteristics of tied labour.

Now that the tea industry is itself facing a crisis since the 1990s and planters are no longer making the adequate investments, the availability of regular work has declined and become more difficult to access. Even today, when young men and even some young women are migrating out of the plantations for work in urban areas, they try to keep at least one member working inside the tea estate in order to maintain the housing benefit and to have a permanent address.

Postscript

As mentioned in the introductory preface anti-trafficking perspectives are increasingly impinging on the way laws are being framed for migrant women workers, and particularly domestic workers. Any engagement with law and migration from a gender perspective must now necessarily engage with anti-trafficking discourses. Like labour laws, the field of anti-trafficking law is also undergoing significant changes in recent years.

At the outset, it is perhaps pertinent to note here that lawmaking and policies against trafficking, have always been more far more driven by international conventions and protocols than was the case for labour laws in India. The policy framework against trafficking was initially established first in the Suppression of Immoral Traffic in Women and Girls Act, 1956 (SITA), amended and renamed Immoral Trafficking Prevention Act (PITA) in 1986. SITA was enacted in pursuance of the International Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others that came into force in 1951. The exclusive focus on brothels and prostitution in both SITA and PITA reflects the preoccupations and frames of the international conventions and discourses of their times. Both SITA and PITA implied that trafficking was solely for the purposes of commercial sex, yet they did not define human trafficking.

A legal definition for human trafficking first entered Indian law with the enactment of the Criminal Law (Amendment) Act, 2013. Following the 2013 amendment, Section 370, of the Indian Penal Code (IPC) now defines the offence of trafficking to include recruiting, transporting, harbouring, transferring, or receiving a person or persons, by using threats, or using force, or any other form of coercion, or by abduction, practising fraud, or deception, abuse of power, or by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person, *for the purposes of exploitation*. It specifies that the consent of the victim is immaterial in determination of the offence of trafficking. Exploitation is further explained as any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs. While it is obvious that such a definition draws heavily and almost word for word on the UN protocol on trafficking (2000) popularly known as the Palermo protocol,

commentators have noted that it leaves out the parts of the protocol that refer to abuse of a position of vulnerability, and to forced labour.⁶⁶

However, in its list of purposes of human trafficking, the most recent National Crime Records Bureau data (Crime in India 2016), includes forced labour, domestic servitude, forced marriage, begging, and various other crimes along with prostitution and other forms of sexual exploitation. The data shows that forced labour actually accounted for more than 45 % of the recorded victims of trafficking in 2016.⁶⁷ In practice, it seems that the net of anti-trafficking police action is cast wider than may be assumed from the text of Section 370 IPC or PITA.

The 2013 Criminal Law Amendment had also raised the age of consent from sixteen to eighteen, aligning the definition of child with the UN Convention on the Rights of the Child. The impact of this change for anti-trafficking interventions may be gauged from the six-fold increase in the number of so designated minor girls in the data records of trafficked persons since the amendment.⁶⁸ The share of minor girls who are recorded as victims of trafficking rose from 23% of trafficked victims in 2012 to 48% of the women victims of trafficking in 2016. Further, girls below 18 years account for more than 62% of the *increase* in numbers of trafficking victims between 2012 and 2016. NCRB data does not provide more details regarding the age of trafficking victims, so we don't know the proportions of borderline young adults among those above 18.

Is this burgeoning of numbers of minor girls among India's trafficking victims reflective of a real shift taking place? Or is it reflective of viewing all adolescent girls migrating for any form of work, with or without family members, as trafficking victims? In raising the age of consent, a criminal colour has now been lent to migration by young women/girls, whose minor status is indeed not always apparent in fact, and remains questionable in principle. It is

⁶⁶ Prabha Kotiswaran

⁶⁷ Table 14.4 in NCRB. *Crime in India, 2016*, shows that 10,509 out of 23,117 victims of human trafficking in 2016 were for the purpose of forced labour. Unfortunately gender diagggregated figures are not provided for purpose of trafficking. Interestingly, in the case of Odisha, more than 92 % of trafficking victims were for forced labour. Thus, even if we take all male victims of trafficking to be for forced labour, we still find that the number of forced labour victims exceeds the total number of male victims of trafficking in several states, a difference that is of particularly great magnitude in Odisha, Kerala, and Tamil Nadu. So we can safely assume that a significant number of female victims of trafficking are also for forced labour. The NCRB data is drawn from the state Anti-Human Trafficking units.

⁶⁸ NCRB data shows that the number of child victims of trafficking was recorded as 809 in 2012. In

clearly not a happy result, for young women to be followed, surveilled or picked up by police from bus stops, trains, or railway stations on the mere suspicion that they may be below 18 and are being trafficked.

What is interesting is that the Criminal Law (Amendment) Act, 2013, emerged as a response to the popular anger against a most brutal gang rape and killing of a young woman in India's capital city on December 16th, 2012, particularly among young women. With thousands of students, their parents and other young people protesting in a mix of rage and fear, the Government of India was moved to quick action. Within a few days after the incident, a Committee was appointed under the Chairmanship of Justice J.S. Verma to 'look into possible amendments in Criminal Law to provide for quicker trial and enhanced punishment of criminals committing sexual assault of an extreme nature on women.' Such was the sense of urgency that the Justice Verma Committee completed its comprehensive report within 30 days, the Criminal Law (Amendment) Ordinance was notified within days of the completion of the report, and in the following month, the Act was passed in both houses of Parliament.⁶⁹ From the sequence of events, the whole process would appear to have been driven mainly by local/national concerns and imperatives. Yet, in the text of the law, there is a discernible influence of international conventions and transnational frameworks and definitions.

Not all internationally honed perspectives resonate positively with Indian experience and circumstances. Arguably, they can sometimes further subvert the freedoms of women. With the mix of frames that now have to be engaged with, rhetorical consensus at national or international levels indeed need to be more critically evaluated, with careful attention to their practical ramifications in intersectional local and social spaces. In the conflicted and restrictive landscape in which women and young girls in particular are placed in India, where they may find themselves at odds with oppressive patriarchal and caste based notions of 'honour', where women going out to work often face social stigma, and where police and administrative structures may be influenced by the same, wider public discourses and policies related to trafficking indeed need to become more sensitive and nuanced. It seems to us that the missing link in the trafficking framework is the absence of any focus on the rights of women as workers or of a labour perspective.

⁶⁹ In early December (4th), 2012, a bill proposing some amendments had already been tabled in Parliament, and there was some groundwork already in place, which is sometimes forgotten.

As of now, in the ongoing discussions for bringing in a new law to replace PITA, the lack of any recognition of women's needs or rights as workers is glaring. Initially, a draft bill titled Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill [TIP], that was circulated by the Ministry of Women and Child Development in 2016 had of course shifted to a gender neutral vocabulary and used person or 'himself' with reference to victims of trafficking. A change in tone was also evident in the elimination of 'immoral' from its text. Perhaps more importantly women 'engaged in prostitution' were only mentioned with reference to the creation of special schemes to enable them to come forward to 'reintegrate in mainstream society.' The brothel too had no place in the draft. Instead, it included a provision for registration of 'placement agencies', defined as a person or body of persons whether incorporated or not other than a Government agency, department or organisation engaged in the business of providing the service of employment to any person.' What such registration entailed was left unclear.

This year however, the earlier draft has been set aside and a completely different Bill has been introduced in Parliament and passed by the Lok Sabha. The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018 provides for additional offences under the category of 'Aggravated form of trafficking' over and above those defined by Section 370 IPC. These include (i) for the purpose of forced labour or bonded labour by using violence, intimidation, inducement, promise of payment of money, deception or coercion by subtle means including allegations of accumulated debt by the person, retention of any identity paper, threats of denunciation to authorities; (ii) for the purpose of bearing child, either naturally or through assisted reproductive techniques; (iii) by administering any narcotic drug or psychotropic substance or alcohol on a person for the purpose of trafficking or forcing him to remain in exploitative condition; (iv) by administering hormones for the purpose of early sexual maturity; (v) for the purpose of marriage ; (vi) by causing serious injury; (vii) who is a pregnant woman or the offence results in pregnancy; (viii) by causing AIDS; (ix) for the purpose of begging; (x) who is a mentally ill person. For such offences, it prescribes a minimum punishment of rigorous imprisonment for ten years extendable to life. Repeat offenders are to be imprisoned for the rest of their natural life.

The present bill no longer mentions placement agencies, but introduces punishment of rigorous imprisonment up to five years for keeping or managing premises to be used as a place for trafficking. Yet, even after the inclusion of forced labour in the definition of aggravated forms of trafficking, the bill makes no provision for worker rights, entitlements,

recovery of dues, or mechanisms to free workers without leaving them unemployed. It thus leaves the victims of trafficking to negotiate their livelihoods without access to any additional rights. Instead, it vests Magistrates with the power to reject applications made by even adult victims to be released from any Rehabilitation Home where they may be sent, which opens the door to criminalizing the trafficked person. Further, a National Anti-Trafficking Bureau has been vested with extraordinary powers of surveillance and the state and district level committees and officers have been given powers and responsibilities designed to support the penalizing thrust of the bill.

The separate criminal law infrastructure for trafficking in the 2016 that had been critiqued for being rooted in a ‘conventional raid-rescue-rehabilitation model and emphasis on sex work’ has been vested with far greater powers for punitive action and surveillance.⁷⁰ What has been removed is the greater emphasis on rehabilitation that was being considered in the 2016 draft.

Withal, and through various rounds of amendments and institutional policies, the anti-trafficking framework has excluded employment rights/entitlements from its frame in precept and practice in India. This is notwithstanding public acknowledgement that debt and duplicity driven control over women migrating for employment/work (including depriving them of wages and freedom of movement) is a significant phenomenon in India. Yet at no level has there been any discussion or proposal for putting in procedures for recovery of such dues. Changing the unfree terms and conditions of work, or addressing trafficked persons’ needs and concerns as workers finds no place in anti-trafficking frameworks.

Our contention is that the labour law pathway against forced labour in migration lacks a gender perspective, and is primarily structured around a limited focus on the labour contractor. On the other hand, the criminal law pathway against trafficking lacks a labour perspective, even when forced labour is included in its conception of trafficking. It does not seem that the new bill on trafficking will mark a break in this pattern, and so the rights of trafficking victims as workers’ is conceptually and practically denied when the anti-trafficking mode of intervention kicks in. This we say from the workers’ perspective. When viewed from the administration’s end there are other questions that may be asked. What is the status of the contractor for example? The labour law framework provides for registration and regulation. Under the anti-trafficking criminal law framework, particularly if the present bill

⁷⁰ Prabha Kotiswaran, 2016.

becomes law, contractors, and particularly the small village level mediator, would be considered a criminal. How these frameworks relate to the new thrust in development policies and programmes, or the changing landscape of labour law and its administration in recent years, raise another set of interlinked questions.

We may end with an account of a curious and exceptional case that was reported in Jharkhand that suggests that on rare occasions anti-trafficking laws may be used to access some limited worker rights. The case refers to 33 year old tribal woman (let us call her Purno) from Jharkhand, who was taken to a household in Varanasi for domestic work when she was just 13 years. Her employer was a teacher in government service. She worked in the household and looked after the daughter of her employer. The daughter is now grown up and is studying in a medical college to become a doctor. The wage rate promised to her at the time of her taking up the employment was Rs. 1000/- per month. During her twenty years of service, Purno did not receive any monthly pay. When Purno's mother died, her brothers had come to visit and they were given Rs 50,000 by her employer. On one earlier occasion Rs 20,000 had been paid to Purno's family. So in the entire period of her 20 years of service, only Rs 70,000 had been paid by her employer, which was the equivalent of Rs 292 per month. Purno had become extremely attached to her charge and to the family she had devoted so many years of her life to. The breach with the employer family came when they no longer needed her services. Where was she to go? Her employer advised her to join an Ashram which was unacceptable to Purno. She returned to her family home in Jharkhand without any money.

Purno took on another job as a domestic worker in Ranchi and then decided to make a complaint against her former employers. With the assistance of a progressive women lawyers' group a case of trafficking was registered. Her former employers then applied for anticipatory bail. For them this was also crucial since as government teachers, their jobs were at stake. The women lawyers' group who were assisting the public prosecutor in the case opposed anticipatory bail. In order to get anticipatory bail, the employers offered to settle Purno's dues. The dues were calculated at the same rate of Rs 1000 per month that was settled on 20 years before. From this the employers deducted half in the name of what they had spent on Purno's maintenance in their home. Although the amount she received much below what was due to her, nevertheless, Purno decided to accept it and agreed to not oppose the anticipatory bail. Purno was not interested in sending her former employers to jail, since over the years she had formed a close attachment, particularly with the daughter. Although

the case will continue, a partial settlement of dues within 6 months of filing the case was indeed made possible by the fact that it was a criminal case. Would Purno have been able to retrieve even partial dues, had it not been a criminal case?

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