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- The Constitution of India (1949), places no restrictions on migration of men and women within and across states in either rural or urban areas, even as it explicitly prohibits human trafficking and forced labour.
- Yet, the bonded labour systems- that flourished in conditions of 'distress migration' - was abolished through legislation only in the 1970s, albeit without any specific reference to women.
- Legislations against trafficking- beginning within a decade after independence- were however, completely female centric, albeit with an exclusive preoccupation with prostitution and sexual exploitation and no reference to forced labour.
- Customary social and moral restrictions on women's mobility that are structured by caste and community identities/hierarchies in India, inevitably became imbricated in the moral universe of anti-trafficking rhetoric. In the present century, the restrictive and controlling edge of anti-trafficking practice with regard to women's mobility does not seem to have ebbed.
- Gandhian social reform, Ambedkar's crusade against caste-based labour servitude, and militant peasant movements like the rebellion in Telangana (1946-51), all played a role in placing the question of traditional class and caste based systems of forced labour on the national agenda, albeit from perspectives that were substantively different from each other.
- However, approaches to unfree labour in the first three decades following independence did not engage with the gender of unfree labour.

Labour law and migration in India: An inheritance of absence of gender

- 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 tying of labour is the norm.
- It however, excludes intra-state migrants from its ambit. And it is not applied to vulnerable situations of inter-state migrant workers who may have been driven by distress, but have travelled from their homes on their own. The ISMWA shares common purpose with the Bonded Labour System (Abolition) Act, 1976 [BLSA] and was seen as

an intervention against labour bondage in migration.

- Both ISMWA and BLSA are silent regarding specific issues of women workers. For example, where women workers are recruited to work as part of male-female pairs or family units and where wages are paid in piece rates (as in brick kilns, sugarcane harvesting, and even some forms of construction), women do not receive individual wages. This peculiarly gendered and dependent status of bondage has not been adequately addressed by the law.
- Further, BLSA and ISMWA have not been applied to forced labour like conditions imposed on migrant girls working and staying under bonded conditions- known as the 'camp coolie' system - in the spinning mills and garment factories of Tamil Nadu.

Present flux in labour policy: Implications for women and migrant workers

- Restructuring of labour laws towards market rather than state regulation (labour law reforms) has been on the agenda since the 1990s policy turn towards liberalization and globalization. Key elements of such restructuring include
 - a) Curtailing inspection systems and emphasis on exemptions and self-certification of compliance with labour laws.
 - b) Removing restraints on flexible employment relations, thus increasing pressures on workers to be perennially on the move.
 - c) Downgrading the premises and principles of social security for workers.
 - d) Restraints on trade unions, industrial actions and collective bargaining.
- Since 2015, an accelerated process of 'labour reforms' has become intermingled with the process of formulation of the labour codes. Amalgamation of 44 labour laws into 4 consolidated codes is being done in the name of simplification, but trade unions and others see this as the rolling back of hard won gains made in the sphere of labour rights.
- Bulky labour codes may be convenient for corporate employers, lawyers and administrators. But can the same be said for workers whose perspective is necessarily best articulated from their actual experience of working in various sectors/segments/categories, and whose interests vis-a-vis the corpus of labour laws have been specifically articulated over the years?
- More importantly, some existing rights of workers are being eliminated in the amalgamation process. For example, the important stipulation that migrant workers' wage should not be less than non-migrants in ISMWA has been removed in the Code making process.

Labour Code Bills of July 2019: Some gender concerns

- The Code on Wages (CoW) 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 on grounds of gender, but does not include the clause that earlier specifically prohibited such discrimination in recruitment.

- Web based labour inspection schedules are given statutory force in CoW, providing employers enough notice to conceal any discriminatory malpractice. Renaming Labour Inspectors as Facilitators indicates a tilt towards ease of doing business rather than safeguarding rights of workers.
- Feminised segments like domestic workers and home workers are excluded by the definition of workers in both CoW and the Code on Occupational Safety, Health and working conditions (COSHWC), reversing the gains made by inclusion of domestic workers in minimum wage schedules in several states, and of home workers in the beedi industry in labour laws for beedi workers.
- No mention of Prevention and protection from sexual harassment in COSHWC.
- Discriminatory provision of denying 26 weeks maternity leave for beyond two children.
- While provision for creches in all establishments with 50 workers (regardless of gender) is welcome, there is concern at the removal of stipulations regarding health/care conditions in creches that presently exist in the Factories Act of 1948, and the 1996 law for construction workers.

Laws and policies against human trafficking and the absence of labour rights

- The policy framework against trafficking was initially established by the Suppression of Immoral Traffic in Women and Girls Act, 1956 (SITA), amended and renamed Immoral Trafficking Prevention Act (PITA) in 1986.
- However, trafficking was legally and technically defined for the first time in 2013 under Section 370 of the India Penal Code (IPC) through the Criminal Law (Amendment) Act, 2013.
- The 2013 amendment, legislated in the wake of the Delhi gang rape and murder case (2012), had also raised the age of consent from 16 to 18, thus criminalising consensual sexual intercourse among adolescents.
- Where laws can be emancipatory, they can also subvert the freedoms of women. Following the 2013 amendment NCRB data shows that the proportion of minor girls increased from 23% of trafficked victims in 2012 to 48% in 2016. The question is whether a real shift that is taking place, or are more adolescent girls travelling for work with or without family members being viewed as trafficking victims because of the changed definition of child?
- A new anti-trafficking bill was tabled in July, 2018. With the dissolution of the 16th Lok Sabha in 2019, the bill has now lapsed, but its provisions signify a more punitive thrust, and incorporation of what is termed aggravated forms of trafficking that widens the scope of

application and opens the door to more aggressive surveillance of movements of young women migrating for work, and criminalizing labour migration.

- The anti-trafficking framework in India continues to exclude workers' employment rights and may be misused to curtail the freedom of movement of young women in particular. Addressing trafficked persons' needs and concerns as workers is yet to find any place in anti-trafficking frameworks.

Development policies, gender and migration

- Beyond the law, development policy interventions that directly or indirectly address women's migration have also been undergoing change.
- Women entered the development policy frame only after the report of the Committee on the Status of Women in India (Towards Equality, CSWI, 1975) drew attention to the strikingly negative trends in women's economic location.
- The 1980s marked a turn in Indian planning moving away from the 'larger development framework' towards more emphasis on 'alleviating poverty' through a specific beneficiary oriented approach. It was at such a conjuncture that women emerged as a specific development constituency in India.
- From the 1990s, as the macro-policy framework took a decisive turn towards liberalization, the labour/production group based Development of Women and Children in Rural Areas (DWCRA) metamorphosed into Self Help Group (SHG) programmes linked with banks with a focus on group based pooling of small savings and micro-credit.
- As agrarian crisis and farmer suicides became widespread and entered wider public debates, in the National Rural Livelihood Mission (NRLM) in 2011, the perspective towards women shifted from their being viewed as beneficiaries to central agents. Rural livelihood programmes and the National Rural Employment Guarantee Act, 2005 (MGNREGA) were all expected to reduce distress migration.
- At the same time, under NRLM [renamed Deendayal Antayodaya Yojana (DAY-NRLM) in 2015], 20% of central funds are allocated for Skill Development Programmes with the objective of 'building skills for the job market outside' for age group of 18-35. The placement of young women from remote and poorer rural areas in textile and garment factories in regions and states far away from their homes, has become a significant practice.
- When young girls are drawn from distant 'backward areas' through a 100% government funded programme, then, does it not imply government subsidized recruitment of captive but flexible labour in industries where conditions of work are known to be particularly harsh? What would be the nature of the nexus that is likely to grow between private agencies involved in training and placement and private industries to which they supply workers?