

Trafficking and migration in India: Legal Challenges



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Trafficking in India: Vulnerable workers

- A significant proportion of the women are engaged in low-skilled, low paid and informal sectors, including traditionally undervalued care work. Due to their increased susceptibility to gender-based discrimination, women and migration for work is often referenced through trafficking and human rights abuses centred around particular categories of work such as domestic work and care work.
- One of the major issues in conceptualizing policy around migration and gender is the tendency to overlook women's agency when it comes to making decisions regarding travel, relocation and work. The focus on prosecution of traffickers and 'rescue' and returning of women to their country of origin is often at odds with what migrant women workers perceive as important for their interests.
- Criminal justice system is at odds with normal remedies used by the labour law which largely consist of 'civil' remedies which recognises that the contract of employment pre-supposes freedom and agency while entering such work relationships.
- A broadening of this perspective is crucial in the global context where there is increasing feminization of migration, of women migrating out of a quest for economic and social opportunities in situations where it is difficult to identify elements of coercion.
- However, it cannot be ignored that women migrant workers are one of the most vulnerable groups in their destination countries. They often face abuse and exploitation and in most countries lack of sufficient labour laws and protections or facilities for healthcare and education.
- While ensuring protective legislative mechanism which is gender-sensitive and prevents exploitation of women's labour, it is important to steer clear of policies that are detrimental to voluntary migration of women workers such as preventing or restricting women's migration on the basis of age, marital status, pregnancy or

maternity status.

- In India, there is no domestic legislation that can cater to the needs of women workers both in cases of international and inter-state migration. Migrant women workers move seasonally, sometimes without support from families in search of work which is acquired through agents/contractors. Legislations that focus on the 'raid-rescue-rehabilitate' model lack the mechanisms to resolve issues faced by migrant workers. There are also limited discussions on the different reasons for migration and if returning the women to their initial location is in line with their aspirations.



Trafficking in India: Patterns

- Trafficking patterns in India indicate that a significant majority of trafficking in persons in India is domestic/intra/inter-state (around 90%). Only 10% of trafficking occurs across international borders.
- Forced labour is the predominant reason for the trafficking of men, women and children in India. Labour trafficking occurs when persons are defrauded, coerced or forced under duress to perform labour or services including involuntary servitude, peonage and debt bondage.
- Another form of trafficking in India is sex-trafficking. Statistically, there is a greater proportion of women and girls (as compared to men) affected by sex trafficking in India.
- Poverty coupled with caste make women vulnerable to trafficking. Lower caste women are more vulnerable to trafficking, often attributed to a traditional lack of access to education and employment.



International trafficking patterns



The United Nations

- The UN published a "Global Report on Trafficking in Persons" which traced patterns of trafficking and the responses of the criminal justice system and domestic legislation to tackle human trafficking.
- There is an increase in both the amount of domestic legislations and convictions on the offence of human trafficking globally.
- The document acknowledges that in India, forced labour cases were 'more frequently detected' than sexual exploitation.
- Forced marriage and organ removal were also found to be causes for trafficking, particularly in India. The report also mentions India as one of the countries where

domestic trafficking is a prominent issue, although it accepts that there is a lack of detailed information in this regard.

- The report identifies that intra-regional trafficking was also rampant with India as the destination state, and Nepal and Bangladesh as countries of origin.



The International Labour Organization (ILO)

- A document, 'Global Estimates of Modern Slavery' was published with a focus on forced labour and marriage.
- The document defines Modern Slavery as an "Umbrella Term" that covers not just forced labour but also debt bondage, forced marriage, other slavery and slavery like practices, and human trafficking. It categorises "Modern Slavery" as a non-legal concept that covers situations where person "cannot refuse or leave" because of "threats, violence, coercion, deception, and/or abuse of power".
- Women are also disproportionately affected by other forms of forced labour. In case of forced marriages, a considerable proportion of those affected were children. Forced labour seems to be globally linked to debt bondage, especially in the agricultural sector, domestic work, construction and manufacturing.



The UN Protocol on trafficking

- The major trafficking specific international instrument is the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, which supplements the United Nations Convention against Transnational Organized Crime adopted in November 2000. It is also known as the Palermo Protocol. India is a signatory to the Protocol and the Criminal Law Amendment Act, 2013.
- Anti-trafficking initiatives between 2000 and 2009 were characterised by sex work exceptionalism; they were preoccupied with trafficking 'for sex work' and 'with sex work' itself.
- The predominant contrasting positions on trafficking were represented by the Human Rights Caucus and the Coalition against Trafficking in Women (CATW) respectively. Human Rights Caucus argued that sex work was a legitimate form of work, whereas, CATW stressed on all forms of prostitution as a violation of women's human rights. The CATW took a 'neo-abolitionist' stance with respect to sex work.
- The Palermo Protocol specifically mentions, and therefore acknowledges the different nature of 'sexual exploitation, and significantly 'prostitution' (as opposed to the term 'sex work').

- The underlying difference of the Human Rights Caucus and the CATW seems to be centred on the approach towards women's agency and that women are capable of making choices even within sex work/prostitution and trafficking.
- Within the UN Protocol, the Human Rights Caucus resists the assumption that all forms of trafficking are inherently involuntary, and recognises that sometimes migration and trafficking are conflated and that it is difficult to pinpoint coercion.

Domestic Laws

1955

Immoral Traffic Prevention Act (ITPA), 1955 criminalizes sex trafficking. However, it does not have provisions for trafficking for purposes other than sexual exploitation. The ITPA primarily appears as an anti-prostitution rather than anti-trafficking law.

1976

Bonded Labour System Abolition Act, 1976 penalises several forms of forced labour. However, the language of the Act focuses primarily on instances where forced labour can be related to a creditor-debtor relationship. The scope of the Act has been expanded by the insertion of amendment, which acknowledged the overlap of bonded labour, contract labour and migrant labour. However, the enforcement of this amendment by the courts has not recognized the significance of this amendment.

1979

Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act (ISMWA), 1979 has been enacted to provide protection to inter-state migrant workers. However, ISMWA remains one of the least accessed domestic labour legislations in India. The licensing and registration system remains ineffective as there is decreasing rates of compliance. The Act has also been criticised for being focussed on the establishment or the contractor for regulation rather than making the individual worker the unit for targeted welfare measures.

2006

Immoral Trafficking Bill, 2006 sought to amend the Immoral Traffic Prevention Act, 1956. The Bill proposed the deletion of the provisions that penalised solicitation of clients by prostitutes, and focussed on the criminalization of clients instead. However, it prohibits practicing prostitution in a brothel or within 200m of a public place. The bill also does not include trafficking for other purposes or other labour sectors like bonded labour and domestic work.

2013

Criminal Law Amendment Act, 2013 defines trafficking more or less in consonance with the definition of the UN Trafficking Protocol. However, the amendment omits 'forced labour' as used in the protocol and uses the term 'physical exploitation'. Moreover, the Act criminalises anyone who engages trafficked persons or minors for sexual exploitation, but does not do so in labour sectors such as domestic work, agriculture and the construction industry.

2018

Immoral Trafficking Bill, 2018 which creates a law for investigation of all types of trafficking, and rescue, protection and rehabilitation of trafficked victims has been criticized on many grounds. A case in point is the provision for authorizing the closure of the 'place of trafficking' as defined under the Bill which could include a wide range of 'premises'. The rescue and rehabilitation model in the bill lacks respect for the agency of trafficked women. Its extension of the shelter home framework to other forms of human trafficking is perplexing. In other words, the bill is not in line with the choices and aspirations of trafficked persons.