

Working Paper No.1

Action Research on Women's Labour Migration in India

(December 2017–July 2018)

Women Migrant Workers in Indian Policy Perspectives

Indrani Mazumdar

ILO's Work in Freedom Project RAS 13/55/UKM



CENTRE FOR WOMEN'S DEVELOPMENT STUDIES

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

25, Bhai Vir Singh Marg (Gole Market), New Delhi - 110 001.

Women Migrant Workers in Indian Policy Perspectives

Indrani Mazumdar

Centre for Women's Development Studies

The Constitution of India, 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. It however, took more than a quarter of a century after the adoption of the constitution, for abolition of the bonded labour systems - that flourished in conditions of distress migration - to reach the frontiers of labour legislation and policy, albeit without any specific reference to women. On the other hand, women centric legislations against trafficking were introduced within a decade after independence, albeit with an exclusive preoccupation with prostitution and sexual exploitation and no reference to forced labour. Anti-trafficking rhetoric in India has of course inevitably been entangled with social and moral restrictions on women's mobility that are in turn structured by caste and community identities/hierarchies. In the present century, which is otherwise witnessing expansion of the definitional boundaries of trafficking beyond a unidimensional focus on commercial sex, the restrictive and controlling edge of anti-trafficking practice with regard to women does not seem to have ebbed.

Enduring concerns, and entanglements, have become further complicated by the flux in policy structures that have accompanied the rise to dominance of liberalization and globalization. On one side an ongoing restructuring of labour law and development policy has seen earlier emphases on regulatory protections from unfreedoms for labour giving way to perspectives that are more overtly inclined to align with and prioritise the shifting demands of industry and capital, whether local, national or trans-national. On the other side, the entangled public engagement with trafficking of women has become increasingly influenced by the accelerated momentum to the circulation of ideas, debates and agendas in international fora. Arguably, the rhetorics of domestic policies towards women or gender issues are today more influenced by the frames of trans-national discourse than ever before. This applies in the sphere of economic development based approaches to women's mobility as well as in the framing of laws, adding to the complicated mix of pulls and pushes that are in play in law and policy making processes.

Labour Law and Migration in India: The Absences of Gender

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, it cannot be denied

that the prevalence of distress migration, of dependence on circular or seasonal migration for survival, and the unfree conditions of work that they both spawn, 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 basic assumptions of labour laws 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; 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 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 migrant workers, to key entitlements of workers conferred in labour laws. So the natural question as to whether migrants should at all be treated as a special class of workers inevitably has complexities that do not admit to easy answers.

Bonded Labour and The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 [ISMWA] in context

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 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 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 [BSLA] and was seen as an intervention against labour bondage in migration.¹ The BSLA itself commands an iconic and benchmark status in India, since it illegalized bonded labour induced by debt *and* customary relationships, as well as their manifestation in imposing constraints on contract labour and inter-state migrants (Srivastava, 2005). It thus provides a living 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.² 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

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 BSLA 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".

² Colloquial forms of forced labour listed in the Act are: 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;

that more powerful administrative structures and resources were pressed into action by the law against bonded labour in comparison to other labour laws.

The inter-state migrant workers' law on the other hand, operates through the labour departments of different states, and focuses on regulating contractors who mediate migration. The felt need for such regulation was at one level 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. The evolution of the multi-tiered labour contractor system as a feature of labour migration in India, of course has roots in colonial practices of mass mobilization of labour from poverty stricken communities and transporting them 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 (Chakravarty, 1978). In the streams of labour migration that were sought to be addressed by ISMWA, the system is based on wage advances given to families well before they migrate, for work that is usually seasonal in character, and where women are often recruited to work as part of family units rather than as individual migrants. In such situations, it is common for women to not receive any individual wages (Teerink, 1995, Agnihotri & Mazumdar. 2009, Mazumdar et al, 2013). The bonded dependent status in which women workers are so placed have not however, been considered by the only law for migrant workers in India. Common to both the Inter-state Migrant Workmen Act and the Bonded Labour System Abolition Act is a silence regarding specific issues of women.³

Although the perspective in both these laws draw on labour policy frameworks that revolved around ideas of free and humane conditions for workers, it is well to remember that both BLSA and ISMWA were enacted and/or conceived under 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 both laws 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 (NCEUS, 2007).

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 followed the judgement.⁴

³ 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.

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

Lack of perspective on gender dimensions of bonded labour migration

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 is rarely applied. 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. Nevertheless, it should also be noted that through several campaigns and court petitions on issues of bonded labour, 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.⁵

It bears mention here that BSLA and ISMWA have not 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 from high poverty rural hinterlands into factory production, with residence/hostels in premises 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. A special camouflage used by some mills to hook girls and their families, was advertising 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.⁶ Initially, the girls so recruited were from within the state of Tamil Nadu, but recruitment grounds now include other states, where disadvantaged

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’

⁵ A point to consider is that the campaigns against bonded labour follow a social reform perspective. They have focused on legal activism and rarely connected with class based trade union organisations, agricultural labour unions, or organisations of the peasantry.

⁶ 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-f40fpqic7vvq2ruqx.netdna-ssl.com/wp-content/uploads/2017/07/Macro-Level-Understanding-of-Sumangali-Scheme....pdf>

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, whose features we will discuss later in this paper. Here, we merely point out that the labour laws against migrant bondage have not been applied, not least because of their silence on gender.

Of laws and policies against Human Trafficking: Gender without labour rights

In contrast to such silence in labour law for migrants and bonded labour, as mentioned earlier, women and adolescent girls have always been in central focus when it comes to legislations against human trafficking. 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 (ITPA) 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 ITPA reflects the preoccupations and frames of the international conventions and discourses of their times. Lawmaking and policies against trafficking, right down to Criminal Law (Amendment) Act, 2013 which has given legal definition to trafficking, appears to have always been more far more driven by international conventions and protocols than was perhaps the case for labour laws in India. Despite their titles, SITA and ITPA did not define trafficking, which was technically defined for the first time only in 2013. But they implied that trafficking was solely for the purposes of commercial sex. Amendments to the Indian Penal Code (IPC) in 2013 that now provide definition to trafficking in Indian law, did indeed broaden such a conception, but still left several areas open to uncertain interpretation.

Section 370, of the Indian Penal Code (IPC): Defining Trafficking in the Indian context

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), 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 (Kotiswaran, 2016. 2018). 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

2016.⁷ 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 ITPA.

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.⁸ 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. 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.

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.⁹ 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.

⁷ 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 disaggregated 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.

⁸ It may be mentioned here that the raising of the age of consent to 18 was pushed by well-known child rights activists, including a Nobel Laureate, but was opposed by most of the women's organizations across India.

⁹ 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.

Not all internationally honed perspectives resonate positively with Indian experience and circumstances. Arguably, a flat one size fits all, can sometimes further subvert the freedoms of women embedded in conservative social milieus. 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 key missing link in anti-trafficking frameworks is the absence of any focus on the rights of women as workers or of a labour perspective.

As of now, in the ongoing discussions for bringing in a new law to replace ITPA, the lack of any recognition of women’s needs or rights as workers is glaring. 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 however, left unclear in the draft.

The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018: More punitive and aggressive surveillance mechanisms, but none for employment/labour rights

In March, 2018, the Union Cabinet had approved a Bill with the same title as the draft mentioned above. The bill approved by the Cabinet decision (PIB, 28th February, 2018), had additional features, a more aggressive surveillance and punitive tone, and less emphasis on re-integration into mainstream society of trafficking victims in comparison to the 2016 draft.¹⁰ The bill approved by the cabinet, was tabled in Parliament in July, 2018 by Maneka Gandhi, then the Minister for Women and Child Development (WCD). Rejecting any demands for reference to a joint select committee, the Lok Sabha passed the bill after a brief discussion, and without reference to any parliamentary committee for detailed appraisal. It was listed for passage in the upper house (Rajya Sabha) in 2018-19, but was not discussed. With the dissolution of the 16th Lok Sabha in 2019, the bill has now lapsed. A change of guard in the Ministry of Women and Child Development has taken place after the 2019 elections, with

¹⁰ Press Information Bureau, Government of India, Ministry of Women and Child Development, 28-February-2018 18:51 IST, ‘Cabinet approves the Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018’

Smriti Irani as the Cabinet Minister WCD, and Debasree Chaudhuri as Minister of State. It remains to be seen whether the bill will be revived in the same form as tabled in 2018.

Nevertheless, an examination of the provisions of The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018 (now lapsed) provides an insight into the considerations of the leadership of the incumbent Government who have received another term. First, it needs to be emphasized that the bill approved by the Cabinet and tabled in parliament, was quite different from the 2016 draft bill that was in the public domain two years before the bill was tabled. Among the key differences was the insertion of additional offences as 'Aggravated form of trafficking' over and above those defined by Section 370 IPC in the Cabinet approved bill. These included (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, the bill prescribed a minimum punishment of rigorous imprisonment for ten years extendable to life. Repeat offenders were to be imprisoned for the rest of their natural life.

The 2018 bill had also removed any mention of placement agencies, but introduced punishment of rigorous imprisonment up to five years for keeping or managing premises to be used as a place for trafficking. It also stipulated that if trafficking is committed on a premise, it will be presumed that the owner of the premise had knowledge of the offence. Unsurprisingly, even after the inclusion of forced labour in the definition of aggravated forms of trafficking, the bill had made no provision for worker rights, entitlements, recovery of dues, or mechanisms to free workers without leaving them unemployed. It had left the victims of trafficking to negotiate their livelihoods without access to any additional rights. On the other hand, it vested Magistrates with the power to reject applications made by even adult victims to be released from any Rehabilitation Home where they may have been sent, which opened the door to criminalizing the trafficked person. Further, a National Anti-Trafficking Bureau had been vested with quite extraordinary powers of surveillance and state and district level committees and officers tasked with anti-trafficking intervention, had been given powers and responsibilities designed to support the penalizing thrust of the bill.

The separate criminal law infrastructure for trafficking in the 2016 draft had earlier been critiqued for being rooted in a 'conventional raid-rescue-rehabilitation model and emphasis on sex work' (Kotiswaran, 2016), has been vested with far greater powers for punitive action and surveillance. In tabling the 2018 bill in parliament, Maneka Gandhi had argued that the bill made rehabilitation a right. The bill indeed sought to delink rehabilitation from delink rehabilitation from criminal proceedings, and provided for rehabilitation of survivors whose

criminal proceedings fall through or who may not wish to participate in criminal proceedings at all. To our minds however, the 2018 bill actually lessened the emphasis on rehabilitation that was being considered in the 2016 draft, and instead shifted the emphasis to centralized institutional powers of surveillance. Without specified safeguards, the possibilities of such a thrust leading to arbitrary interference in the movement of young people, and the penalizing friends and associates who may be innocent of any criminal intent, cannot be ignored.¹¹

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.

As may be seen, the laws against forced/bonded labour and against trafficking have developed along different pathways, drawing on different conceptions and preoccupations. 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. The criminal law pathway against trafficking lacks a labour perspective, even when forced labour is included in its conception of trafficking. Even the 2018 bill on trafficking, despite introducing forced labour as an aggravated form of trafficking, made no break in this pattern. And so we find 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, 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.

Development Policies and labour migration: A contradictory landscape

Beyond the law, development policy interventions that directly or indirectly address women's migration have also been undergoing change. In the first three decades after independence, women had received no specific development policy attention. At best, they were confined to

¹¹ 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 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. Unsurprisingly it makes no provision for worker rights, entitlements or recovery of dues, and leaves the victims of trafficking to negotiate their lives and livelihoods. Instead, even adult victims are to be placed in Rehabilitation Homes and Magistrates have the power to reject applications made by the victim asking to be released from such homes. The entire machinery that is sought to be established from a National Anti-Trafficking Bureau down to the district level committees and officers appointed at various levels have been given powers and responsibilities designed to support the penalizing thrust of the bill.

a limited place under some social welfare schemes that supported voluntary (read charitable) efforts. Their migratory patterns and compulsions were of no interest to policy makers, especially since it was clear that migration for work, and particularly for large scale industry, had been predominantly of men. Women entered the development policy frame only after the damning 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. Towards Equality had concluded that the 'impact of transition to a modern economy has meant exclusion of an increasing number and proportion of women from active participation in the productive process', left without returns or recognition, and those who did participate being 'on sufferance and without equal treatment, security of employment and humane conditions of work', and without any protection from society or the State.

The 1980s and IRDP

As a resurgent women's movement in the 1980s adopted the Towards Equality report as its foundational text and combined with the developing field of women's studies in India to demand the attention of planners, the pressures on policy makers to devise specific measures to address women's work situation mounted. The 1980s also marked a turn in Indian planning moving away from the larger development framework of dirigisme 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. And it was in Centrally Sponsored Schemes for poverty alleviation that women were first brought in as a separately defined social group. Under the Integrated Rural Development Programme (IRDP), which functioned as the umbrella for rural development schemes from 1980 to 1999, a women centric sub-component, the Development of Women and Children in Rural Areas (DWCRA) aimed at establishing rural women's collectives for income generation through grants and technical assistance.

1992 onwards: the SHG wave

By the end of the 1980s, women constituted 26% of IRDP beneficiaries (Govt. India, 8th Five Year Plan). From the 1990s, as the macro-policy framework took a decisive turn towards liberalization, DWCRA metamorphosed into a Self Help Group (SHG) programme linked with banks, and with a focus on group based pooling of small savings and micro-credit. Rural women indeed responded in quite extraordinarily large numbers to the SHG-Bank Linkage Programme initiated by NABARD in 1992, although such response was significantly concentrated in southern India.¹² Around half of these SHGs were linked to government credit and subsidy based schemes for self-employment, consolidated under Swarnajayanti Gram Swarozgar Yojana (SGSY) which replaced IRDP in 1999, and where women constituted 40%

¹² In 2016-17, of the more than 8.5 million SHGs linked to banks, more than 7.3 million were exclusively women SHGs. Yet, even after a drop in the share of the southern region (A.P., Tamil Nadu, Karnataka, Kerala), the south accounted for 43% of the SHGs under the SHG-Bank Linkage Programme in comparison to 10 % in the more populated central region (UP, MP, Chhattisgarh, Uttarakhand), and 5% in the northern region (J&K, Rajasthan, Punjab, Haryana, Himachal), The eastern region (West Bengal, Bihar, Jharkhand, Odisha) had reached 23%, the western region (Maharashtra, Gujarat, Goa) accounted for 13% and the Northeast for 5%. (NABARD, Status of Micro-finance in India, 2016-17)

of the beneficiary targets.¹³ By the time SGSY, was replaced by the National Rural Livelihood Mission (NRLM) in 2011, the perspective had moved towards women being viewed as the central agents (rather than beneficiaries) in government schemes for rural livelihoods that now aimed at elimination of poverty through ‘universal social mobilisation’ and ‘harnessing woman power.’ In NRLM, greater emphasis was placed on reducing the relative weight of subsidies and giving greater weight to credit.¹⁴

Public wage work: MGNREGA and a great leap forward for women

The other component of such poverty alleviation development programmes was directed at provision of wage employment for some days in a year. Initially, these public wage works were mostly allocation driven and in the 1980s, women’s share of such employment was less than 20%, increasing to 30% by 2000. It was the entitlement and demand driven legal right to up to 100 days of employment for rural households that was established by the National Rural Employment Guarantee Act, 2005 [renamed Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) in 2009] that led a great leap forward in women’s share of public wage employment under, which crossed 56% of total MGNREGA employment by 2016-17.¹⁵

Although framed for sedentary rather than migratory populations, the women drawn into these poverty alleviation programmes included many who were compelled towards seasonal migration by seasonal unemployment and/or recurrent drought in their areas of origin, as well as those dispossessed of land and/or occupation. Most of these seasonal migrants belonged to either tribal or dalit agricultural labour classes/communities. Much misery was associated with the disruption caused to their family life, their children’s education, and small asset management, by such intermittent migration, impelling them to easily accept other options, however limited, in their home village lands. Some of the most successful cases of application of the collective model of DWCRA drew on collective experience of migrant forms of labour among such intermittent migrants (Banerjee, 1984, 1991). Stoppage of distress migration was thus considered a desirable object of the rural livelihood schemes for women. The same was the case for public provision of wage employment, however limited in nature. Although the

¹³ It may be noted that in the 1990s targeted beneficiaries for any subsidy based livelihood, employment programme, or public food distribution programme, had become conditional on their households being counted as below poverty line (BPL). This was said to ensure better targeting of the schemes at the really poor and needy. Interestingly, the first and strongest opposition to such ‘targeting’ came from the women’s movement, and particularly AIDWA. Their argument that BPL targeting subverted outreach and was divisive, apart from the fact that an arbitrary poverty line was untenable for identification of the poor, especially with millions clustered and shifting around the so-called line who would be in special need but remain deprived because of BPL targeting. As experience mounted of persistent exclusions of vast sections of the poor from basic benefits such as subsidized rations, the critique of BPL targeting now has a wider support base.

¹⁴ 3.7 million SHGs were under SGSY/NRLM in 2016-17. SGSY had been criticized as being too subsidy driven, and with credit not playing as adequate a role (as required by the neo-liberal policy approach), and this was cited as one of the reasons for changeover to NRLM. See Govt. India, 12th Plan, Vol 2, p. 298. The subsidy for a Revolving Fund for new SHGs under NRLM is contingent on 75% of the SHG membership being in the BPL category, and subsidized interest is available only if no capital subsidy has been availed of. Further, the new programme for ‘empowerment of women farmers [Mahila Kisan Sashaktikaran Yojana (MKSY)], provides for grants on the basis of project proposals that are geared towards mobilizing, training, and supervising Sustainable livelihoods and Climate Change (SLACC). In 2015, India signed a loan agreement with World Bank for 8 million dollars for SLACC activities under MGNREGA and MKSP.

¹⁵ http://mnregaweb4.nic.in/netnrega/all_lvl_details_dashboard_new.aspx, accessed July, 2018

jury is still out on the macro-impact of MGNREGA on migration, anthologies of several studies have gathered micro-evidence that it has indeed stopped or shortened the duration of distress migration that is family based (Sameeksha). Since MGNREGA offers only 100 days per household, it is unlikely that it will have much impact on the patterns of medium term migration of single women and indeed men as well, even though such migration may also be distress driven.

Skill Development policies and migratory placements

Following a different pathway, a pronounced turn towards promoting migration by the young through skilling and placement in private companies has gathered momentum in present day programmes that fall within the larger and high profile rubric of skill development in India. Differing from the state run industrial and vocational institutes run directly by the Directorate General of Training & Employment (DG E&T) under the Ministry of Labour, in 2008 a National Skills Development Corporation (NSDC) was established, as a Public Private Partnership (PPP) Company to ‘catalyse’ creation of new vocational training institutes and ‘Industry led Skill Councils’. More recently, a ‘Skill Mission’ was launched by the Prime Minister in July 2015 and a Ministry for Skill Development & Entrepreneurship (MSDE) now has an overarching role, having brought DG E&T and NSDC and related institutions under its wings.

Under NRLM, [renamed Deendayal Antayodaya Yojana (DAY-NRLM) in 2015] 20% of central funds are allocated for programmes under the Aajeevika Skill Development Programme (ASDP) as part of the objective of ‘building skills for the job market outside’. It’s orientation towards the young is evident in its specification that it is for an age group of 18-35 (in some of the earlier initiatives they included the 16-18 age group). The programme is implemented through project implementation agencies (PIAs) defined as ‘for profit or not-for-profit’ entities identified by ASDP. Apart from this, a whole range of similar skill and placement schemes by Central Ministries/Departments of the Government of India, including of apprenticeship, are now covered by a set of common norms including a funding pattern that provides grants to PIAs which are cover costs that include board/lodging, transport, hours of training, etc. (calculated per trainee). These grants include costs of providing assistance at destinations outside the home district, and an incentive for ensuring the trainee continue to work for at least three months to a year wherever they are placed.¹⁶

In answer to a question in the Rajya Sabha on 28th March, 2018, the Minister for Skill Development, stated that out of 41.3 lakh persons trained under skill development programmes in the three years preceding, only 6.15 lakh had got jobs. In other words, the placement rate stood at just 15%.¹⁷ At an overall level, the idea that skill training would lead to employment has obviously not had much success. At the same time, when skill programmes have led the

¹⁶ In the 2018-19 budget, while the funds for MGNREGS, have remained unchanged, NRLM, has seen an increase of 32.2%, suggesting a shift in the government’s emphasis away from public wage works in the coming period.

¹⁷ See Subodh Varma, <https://newsclick.in/modis-failures-skill-development-disaster>

migration of young women from remote and poorer rural areas to textile and garment factories in regions and states far away from their homes, other questions arise.

Reflecting on the experience of having been associated with a skill and recruitment organization in Odisha between 2013 and 2015, one study describes how from the factory to the residences/hostels where the girls were accommodated (both under the control of the employers), the girls stepped into a closely surveyed regime. Their movement outside is restricted and welfare officers and wardens employed by the factory play a disciplining as well as caring role in the girls' lives. (This was in the metropolitan city of Bangalore which, in neo-conventional parlance, would be considered to be an aspirational destination providing greater freedom to women). The study argues that in establishing such a regulatory regime, the families of the girls, the trainers and recruiters in Odisha, and the employers in Bangalore - all play a role. The forms of regulation so forged, 'prioritise protection and discipline over learning and freedom'. The study further argues that freedoms, that were routinely available to the girls in their villages – such as being able to move freely in their neighbourhood - were considered dangerous and therefore restricted and controlled (even outside working hours), in the framework of a regime that manages to extract work and income from the girls and also controls and regulates their personal lives. The discriminative coercive power inherent in such a regime was illustrated by the case of a young woman who got married and wanted some flexibility to be able to go out and meet him. She was dismissed by her employer (Ruthven, 2016). Elsewhere it has been suggested that by subsidising the stream of new entrants at no cost to employers, the skill development and placement policy may have had the opposite effect and even kept wages down and the policy seems to be helping sustain the low wage-high flexibility price point (Ruthven, 2017).

In situations of growing resistance to harsh conditions among workers from the regions/states where such industries are located, the skill programmes seem to be bringing in a flow of young women from more distant regions. Since these girls are then kept in accommodations/hostels that are directly or indirectly under the control of their employers and where restrictions on the movements of adult workers in their leisure time are the norm, a question that perhaps needs to be asked is - does such a system not provide employers with undue coercive power over the lives of the workers even beyond working hours? Particularly in a situation, where their employment contract does not necessarily give them permanent worker status, should they want to continue in their employment, without the control of the employer over their lives outside of working hours.

Available accounts of such recruitment for the apparel industry suggest that the majority of girls so recruited tend to leave within short periods for a variety of reasons, including their distaste for the intensive production targets and regimes of labour, difficulties in adapting to different food regimes, cultural angst, family demands for their return etc. It appears that not more than 30 per cent of such girls from Odisha actually stay on in Bangalore even for a year. Because of such high attrition, some training organisations are involved in devising methods to help employers to retain such recruits. Again the question that needs to be asked is that when young girls are drawn from distant 'backward areas' through a 100 percent government funded

skill development programme, then, does the skill development programme not play the role of subsidizing recruitment of captive but flexible labour in industries where conditions of work are particularly harsh?

When viewed alongside the government's commitment to paying the employer's share of provident fund (read a portion of the workers wage) and the introduction of fixed term employment, a sense has been growing that a new nexus is being established for the supply of cheap and pliable labour for sweatshop industries. The nature and manner of subsidies provided by the government suggests that from recruitment to wages and facilities for easy retrenchment, the whole process reduces the liabilities and responsibilities of the industry. In a model of government funding of private agencies for skill development, the dangers of a nexus getting established between private training institutions sponsored or supported by government grants and industries that at best provide low wage employment of uncertain duration, need to be reckoned with. An additional question that needs longitudinal investigation would be what indeed are the longer term potentialities of such employment to sustain the lives of young women as they move into other stages of their lives, when they marry or have children?

Historical Perspective on Unfree labour migration in India

The issue of unfree or forced labour migration had first emerged as an emotive and significant issue in opposition to the system of indentured labour migration (through which Indian 'coolies' were supplied to plantations and/or construction projects in West Indies, Africa or South East Asia, as well as within India to Assam and Bengal).¹⁸ It initially came up as part of the early nationalist opposition (albeit of a moderate hue) to white racism against Indians under colonial rule through a limited demand to end the supply of indentured labour to Natal, South Africa in the first decade of the 20th century (Gandhi was in South Africa at the time). Later, it developed into a demand for complete prohibition of the system. Recently, it has been suggested that the demand was of interest to Indian elites, only because they wanted to shed the identity of 'coolie', a term often used as a racist epithet to define Indian identity in South Africa and other colonial outposts (Kumar, 2014). Be that as it may, as mass mobilisation against colonial rule gained momentum in India, the demand for an end to the whole system of indentured labour became a popular refrain taken up repeatedly by nationalists, albeit from a range of positions and perspectives. In any case, whatever be the motivation, it does not take away from the strength of the arguments that were provided against the iniquities of the indentured labour system that remain of enduring value and may still be found to be applicable to some contemporary situations. At the same time, the unsavoury and conflicted tendency to view migrant women exploited by the indentured labour system as causing 'frightful immorality' remains relevant for understanding the long arm of history in shaping censorious

¹⁸ The indentured labour system came into place after slaves were no longer available to work in colonial plantations following the abolition of slavery in the British Empire in 1833. Although under indenture, a contract between employer and labourer was signed, it derived authority from master and servant laws that imposed criminal punishment for breach of contract by workers. It was indentured labour from India, derogatively called 'coolies' who worked the sugar, cotton and tea plantations, and rail construction projects in British colonies in West Indies, Africa and South East Asia, especially after the abolition of slavery. The system of indentured labour was finally legally abolished in 1917.

attitudes towards women's migration that even 21st century women in India have to contend with.

Opposition to Indentured Labour

Speaking on his resolution to prohibit indentured labour in 1912 (which was defeated in the Imperial Legislative Council), Gopal Krishna Gokhale had identified the features of the indentured labour system as one where recruited workers were 1) being bound to go to a distant and unknown land, the language, usages and customs of which they do not know, and where they had no friends or relatives; 2) were bound to work there for any allotted unknown employer in whose choice they had no voice; 3) being bound to live on the estate of the employer, requiring a special permit to go anywhere, and committed to perform all tasks given them, however onerous; 4) being bound for a period of usually five years, with no means of escaping regardless of conditions; 5) on a wage, invariably much lower, than the wage paid to free labour around them; and 6) under special law which imposed on them a criminal liability for the most trivial breaches of the contract, a fact not mentioned in the indenture contract. He pointed out that the penal system that characterized the indentured labour system was driven by the conditions of work and life in the colonial plantations, which were so terrible that former slaves had refused to continue working in following the abolition of slavery.¹⁹

Again in 1916, Madan Mohan Malviya moved another resolution seeking abolition of indentured labour, which was also defeated at the time.²⁰ By then, popular outrage against the horrors of indentured labour system that had been publicized by returnees from abroad (men and women) had gained great momentum, and the Imperial Government had to give an assurance that the system would soon be ended.

Since by law every 100 male indentured workers had to be accompanied by 40 women, a key element in both Gokhale's and Malviya's speeches before the Council was with reference to women, albeit largely couched in tones of moral censure of the women themselves. Gokhale, for example, alleged that "women of admittedly loose morals" had been recruited resulting in "frightful immorality". Malviya, while describing the extraordinarily hard workday and additional duties of indentured women workers in some evocative detail, also argued that the "paucity of women and the character of women recruited have been a fruitful source of immorality."²¹ From the evidence at our command, we find ourselves unable to agree with the

¹⁹ R. P. Patwardhan, D. V. Ambekar, Dattātreyā Gōpaḷa Karve (eds), *Speeches and writings of Gopal Krishna Gokhale*, Vol. 1, p. 349 to 358.

²⁰ Arguing before the Legislative Council in 1916, Madan Mohan Malviya pointed to the evidence of coercion in the excessive prosecutions of workers for desertion or insubordination, high rates of suicide among men, and the record of excessive numbers of murders of women alongside remarks about the prevalence of 'vice' and 'immorality'.

²¹ A report on Indian indentured labour in Fiji by C. F. Andrews and W.W. Pearson that was referred to by Malviya drew attention to the practice of women being inveigled from pilgrimage sites, especially because of the law required that the number of female immigrants must be 40 per cent of that of the male immigrants. Using the same report, Malviya started by mentioning the greater hardship and longer work hours of women, and the cruelty of a woman being whipped for wanting to take her sick child to work, but a tone of moral outrage was also directed at

views of revisionist historians that indentured labour migration offered a great escape and choice to oppressed and starving workers, men and women, views that echo what the planters were saying at the time. However, the evidence of high mortality rates among indentured labour, large-scale desertions and penal provisions for recapture of deserters, suggest otherwise.²² The old arguments regarding the great escape are today appearing in a different form and with reference to a wider set of classes than colonial planters. As in the past, a focus on the conditions to which workers are migrating is the key to understanding how free or unfree they are.

Indentured labour was abolished in 1917, and the arguments put forward against it gave shape to an opposition to a contract based forced labour migration that contained the inherently unfree foundations of a nation in colonial bondage. Yet this was only one part of the story. There was also the bondage based on the internal structures that upheld the feudal foundations of both endogenous and colonial social economies in the Indian sub-continent. Compulsions of mass mobilization in the freedom struggle, could not but include an internal agenda towards changing feudal agrarian relations within India and the bondage on which it rested.²³

Against feudal bondage and servitude: Gandhi, Ambedkar, Sundarayya

For example, Jan Breman refers to Gandhi's reaction, when he came across the system of bonding/tying the labour of individual tribal families (known as Dublas) to upper caste landowners through debts that could be handed down generations, in a system called *Halipratha* in South Gujarat (1921). Gandhi is said to have asked how colonial rule could be fought if it implied tolerating such systems of bondage (Breman, 2007).²⁴ The caste system that fed and gave structure to social and economic bondage and had then been incorporated into colonial practice, was an issue that repeatedly came to the fore in the run up to independence. When nominated to the Bombay Legislative Council, B. R. Ambedkar introduced the *Mahar Watan* Bill in 1927 and then again in 1937, seeking to abolish the practice of forcing the *Mahars* to perform a whole range of work and services by the colonial bureaucracy without payment, on the basis of a small piece of land (*watan*) allotted do them. The practice was a classic

the report that "women exchange their husbands as often as they like" and "Sexual jealousy has led to a great increase in suicides and murders."

²² Of the 85,000 labourers imported into Assam between 1863 and 1866, no less than 35,000 were reported to have died or deserted (GOB 1868). Rana, Behal (2013): *Coolies, Recruiters and Planters: Migration of Indian Labour to the Southeast Asian and Assam Plantations during Colonial Rule*. In: *Crossroads Asia Working Paper Series*, No. 9. When the labour intensive drive for expanding production faced the challenge of 'bolting', 'absconding' and 'deserting' coolies, the planters used legal, extra-legal and economic coercion to control and immobilize the labour force. Indenture penal contract and right of private arrest without warrant awarded to planters in Assam and indebtedness through advances for passage fare and penal provisions for non-compliance of work in the case of kangani system in Ceylon and Malaya were the instruments through which the immobilization process operated.

²³ There were of course colonial discourses on bondage that reflected British perceptions of slavery and servitude in India about which a discussion may be found in Gyan Prakash, *Bonded Histories: Genealogies of Labor Servitude in Colonial India*, Cambridge University Press, 1990.

²⁴ Gandhi's remarks were about the misery of the *Halipratha* bondage relationship of the landless tribal 'Dublas' with the Anavil Brahmin landlords in southern Gujarat when he toured the countryside of South Gujarat in 1921 (The term Dubla, which carried the derogatory connotation of being a weakling was replaced by the term Halpati which meant master of the plough by Gandhi). See Breman, J, *Labour Bondage in West India; From Past to Present*. Oxford University. Press, New Delhi 2007.

example of how the colonial government followed the feudal practice of treating members of the ‘untouchable’ communities as bonded village servants (Omvedt, 2004). Similarly, powerful and popular anti-feudal protests against the *vetti* system of extracting free labour from ‘untouchable’ and other artisanal castes by landlords and feudal functionaries, were prominent in peasant movements at the dawn of independence such as the armed rebellion in Telengana (1946-51), then part of the princely state of Hyderabad. P. Sundarayya, one of the key figures in the Telengana peasant rebellion, has argued that it was the Telengana struggle that forced the issue of land reform onto the agenda of post-independent India, but it also foregrounded the link between land reform and the abolition of forced labour exactions imposed on the basis of caste and class locations in feudal hierarchies (Sundarayya, 1972).²⁵

In our view, Gandhian social reform, Ambedkar’s crusade against caste based labour servitude, and militant peasant movements 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. Yet, along with the earlier opposition to indentured labour, they all formed the background context for the inclusion of Article 23 (1) in the chapter on Fundamental Rights of the Indian Constitution of 1949, which specifically prohibits ‘Traffic in human beings and *begar* and other similar forms of forced labour’.²⁶ The Explanation attached to this clause, says ‘Nothing in this sub-clause shall prevent the State from imposing compulsory service for public purposes without any discrimination on the ground of race, religion, caste or class. It seems that what was being clarified was not just that the state could impose compulsory service, but crucially, that it would no longer be allowed to impose such compulsion on the basis of caste, class, or religion as had been practiced in areas directly under the British as well as those under princely rulers in the colonial era.

Why does the Indian Constitution refer to trafficking and forced labour in the same sentence, and under a sub-section on *Right against Exploitation* in which the only other issue addressed is of child labour? Was it perhaps influenced by assumptions and axioms in international discourses against slavery that included the forced labour route to slavery and trafficking for sexual purposes in a common frame? Did the arguments against coerced indentured labour, and the moral tone regarding the women who were transported as indentured labour contribute to the sub-textual link between the two? Whatever be the case, in the perceptions of the framers of the constitution, trafficking and forced labour were connected, and gender concerns were preoccupied with women in prostitution, as evident in the Constituent Assembly debate.

The Constituent Assembly

²⁵ In Hyderabad state under the rule of the Nizam (considered to be the richest man in the world at the time), various forms of forced labour and exactions were extracted not only by the landlords but also by all the officials, petty or high, either living in the villages or when they came on tours or on special visits. Among the worst of all these feudal exactions was the prevalence of keeping girls as “slaves” in landlords’ houses. Sundarayya noted that when landlords gave their daughters in marriage they presented these slave girls and sent them along with their married daughters, to serve them in their new homes. These slave girls were used by the landlords as concubines.

²⁶ *Begar* refers to the practice of compelling tenants to render free service to their landlords under the zamindari system in India. Legally speaking, it refers to labour or service extracted by a government or person in power without giving remuneration for it.

In the constituent assembly, one amendment was moved to focus the above mentioned clause exclusively on ‘slavery’ and ‘involuntary servitude’ (Kazi Syed Karimuddin). Another suggested the insertion of ‘servitude and serfdom in all forms (Damodar Swarup Seth). Both were summarily negated. Yet another attempt to insert ‘and prostitution’ along with trafficking (Giani Gurmukh Singh Musafir) also did not receive much support. A related, but differently framed suggestion to include prohibition of ‘dedication in the name of religion to be Devadasis’ which was posited as a form of slavery (K T Shah), was brushed aside (by Durgabai Deshmukh) on the grounds of the practice being region specific and therefore capable of being dealt with by other laws.²⁷ It is interesting however, that the issue of the Devadasis generated much more support and discussion than the other amendments.²⁸ Apart from the Devadasi question, the constituent assembly debate on trafficking, which was exclusively focused on women and included a strange, if passing reference to ‘white slave traffic’, appears sketchy and superficial. On the other hand, the very specific mention of *begar* along with forced labour had many voices from across regions speaking about/against it, which suggests that there were more socially grounded conceptions at work when it came to forced labour. This is notwithstanding the fact that some prominent leaders who spoke against *begar* and forced labour in the constituent assembly had earlier been reluctant to support popular movements against such feudal practices, and the change in stance perhaps reflects the impact of peasant and worker uprisings at the dawn of independence.²⁹

It does seem that the democratizing impulse arising out of mass mobilization in the freedom struggle contributed to the quick consensus on including prohibition of *begar* and forced labour. These early discussions around trafficking and forced labour remain important today, since in some very fundamental ways, they lay out questions of enduring relevance to the conceptions of unfree labour in India.

²⁷Arguments against prostitution associated with the devadasi system have been critiqued by some feminist historians. The devadasi system of dedicating girls/women to a temple emerged from the concept of divine fecundity as an integral part of agrarian societies (Pande, 2008). Devadasis were employed as dancers, singers, musicians; they never married mortal men, but they did cohabit with men of their own class. and offered their services to the temple deity. The dividing line between ritual services to the deity and ritual services to the king were blurred as kings sought to legitimise their power and authority and who was also were cof as performed. It bears mention that caste was at the centre in the acrimonious arguments when abolition of the system was first proposed. In 1930, when Muthulakshmi Reddy introduced a Bill on the “prevention of the dedication of women to Hindu temples in the Presidency of Madras.” She was not given support by C. Rajagopalachari who led the Congress in Madras at the time. Some veteran Congressmen (S. Satyamurthi) argued that it should not be abolished since it was part of indigenous Hindu culture. To which Reddy, whose mother was of the Isai Vellala caste of Devadasis although her father was a Brahmin, had retorted that if that was the case, then Brahmin women should become devadasis. She received the support of the Periyar and his non-Brahmin self-respect movement supporters. It took 15 years to finally get the Devadasi Abolition Act passed. Such arguments anticipate the fractious tensions between dalit and the sex worker identity politics that have come to the fore more recently.

²⁸Constituent Assembly Proceedings, Friday, the 3rd December 1948. K T Shah had moved to include devadasis and was supported by Biswanath Das. Das, a former premier of Orissa (1937-39) and briefly the state Chief Minister (1972-72), had also wanted an amendment to Article 23 (1) to include a specific mention of trafficking in women, which was not accepted.

²⁹ Interestingly, the draft on fundamental rights which included the clause against forced labour, was moved by Vallabhai Patel, who had earlier scuttled demands to end *halipratha* styled forced labour in his native Gujarat.

Post -independence

Approaches to unfree labour in the first two decades following independence did not significantly engage with the gender of unfree labour. Efforts were directed at understanding the observable constraints ('built in depressor') on agricultural growth in India at the time. For this, a class analysis of land and labour relations was the most useful. Within academia, the Thorner, for example, divided the agricultural population into three classes - Mazdoor (worker), Kisan (peasant), and Malik (meaning in this case, landlord). They also described three forms of forced labour – 1) long-duration relations, 2) the 'beck and call' relationship, and 3) the system of 'forced' free or underpaid labour of tenants – each of these forms being underpinned by long term social relationships of dominance and dependence (Thorner & Thorner, 1962).

These early debates therefore engaged with economic policy and class relations in a period when decolonization, agrarian reform, and state led industrialization was high on India's overall policy agenda. Along with land reform, a mixed economy and then the adoption of the objective of 'a socialistic pattern of society' were also prominent in policy rhetoric, even as actual policies were directed at promoting capitalist development. The phrase "socialist pattern of society", was defined in the tone setting 2nd Five Year Plan to mean "that the basic criterion for determining the lines of advance must not be private profit but social gain, and that the pattern of development and the structure of socio-economic relations should be so planned that they result not only in appreciable increases in national income and employment but also in greater equality in incomes and wealth". Even critiques of the plan by economists also argued that the actual importance accorded to the private sector in the plans and the limited nature of land reforms stood in conflict with the stated objective of the Plan (Dasgupta, 1957). The political context was such that the critical thrust of studies and analyses of servitude and bondage found some resonance in the precepts that framed the policy discourse of the times, albeit in a partial manner.³⁰ Specific attention to the unfree labour of women or its conceptualization was not, however, a feature of these early academic debates which were mostly focused on agrarian reform.

Despite much public discourse in support of a land redistribution agenda however, thoroughgoing land reforms were not undertaken. Instead, in agriculture, state aided private investment within a partially reformed agrarian structure, had led to a situation of regional concentration of growth, with a minority of regionally concentrated capitalist landlords and rich peasants raising their level of income, while the majority of labourers and poor peasants stagnated at the margin of subsistence across the country. This in turn made for debt and bondage at one extreme, and at the other, the emergence of an exploitative labour contractor regime to supply seasonal workers from more backward regions to more commercially developed areas of agriculture.

³⁰ PC Mahalanobis, considered to be the principal architect of the 2nd Plan had several interactions with the Thorner, and Daniel Thorner was also consulted for some aspects of plan statistics.

Adding to the pool of indebted labour were those earlier employed in traditional artisanal industries, among whom wage and income levels sank even lower than of agricultural labour creating conditions for “downward occupational mobility and degradation of human resources, de-skilling and ruthless exploitation (Shramshakti, 1988).” By the end of the 1960s, it had become clear that the promise of the ‘development’ pathway to freedom from bondage was not being fulfilled, which paved the way for a more administrative approach towards identification, release, and rehabilitation of bonded labour as expressed in the 1976 law against bonded labour.

Post liberalization

With the advent of liberalization (formally accepted as policy in India during the 1990s) and the commanding role that neo-liberal frameworks acquired over policy, the ground on which contemporary debates are playing out has significantly shifted from earlier times. Questions of redistribution led development or the structural foundations of unfree labour have been left to dwell in the realm of analytical academic discourses that are more distant from policy discussions than earlier.³¹ The belief in unrestricted markets, reduced intervention by the state in the economy, and private sector driven economic growth has effectively displaced the dirigisme model of planned development. A continued significance of fairly generalized changes taking place in labour relations, particularly in rural India, still remains of relevance to those interested in understanding class correlations in India’s countryside, but their frames of analysis have little traction with policy makers, and are indeed at odds with the neo-liberal policy frameworks that are currently followed by the Indian state.³²

Within a decade of the adoption of neo-liberal frameworks in policy, the triple phenomena of agrarian crisis, jobless growth, and rising inequality had emerged as key features of

³¹ See for example the long debates on unfree labour between Tom Brass and Surinder Jodhka in the pages of *Economic and Political Weekly* in 1995-96.

³² An important, but less known debate between Utsa Patnaik and Tom Brass points to some fault-lines and gaps in ways of approaching bondage between southern and northern scholars. Utsa Patnaik, for example, has argued that the classical path of autonomous growth of capitalist relations in Europe, and the freeing of domestic labour from the extra-economic coercion of feudalism, took place within a context of rapidly expanding external economic frontiers, and no theoretical disentangling of the processes of freeing workers under capitalism within the metropolises from the context of external expansionism is possible. She further argues that the concessions and freedoms won by workers in advanced capitalist countries and the achievement of the ‘semblance of a working social contract’ were necessarily predicated on the lack of freedom imposed on the colonized (Patnaik, 1995). From a different ideological frame, it is well to recall that Arthur Lewis had also pointed out that there were two great streams of migration in the nineteenth century: a migration of labor from tropical and subtropical regions like India and China, which went as “coolie” or indentured labor to other tropical or subtropical regions, and a migration of labor from temperate zones of Europe, which went to other temperate regions like the United States, Canada, and Australia and the inequalities of wage and incomes between the two streams structured a long-term wage inequality that still persists. These two streams were kept strictly separate through severe restrictions on tropical migration to the temperate lands. The point at issue is that some scholars hold that a distinction needs to be made between the continued servitude, unfreedom, and extra-economic constraints that operated in the third world where capitalism developed under specific conditions of colonialism and imperialism that propelled pauperisation, and the extra-economic servitude that waned in the metropolises where autonomous development of capitalism took place which led to proletarianisation. The question of capitalist bondage that is described and argued by Jan Breman, Tom Brass and others (albeit along different lines), does not settle the central theoretical question regarding the freedoms of the advanced capitalist countries being premised on the unfreedoms of the colonized, a point that is perhaps also implicit in Rosa Luxemburg’s theory that without a non-capitalist sector, extended reproduction of capital or accumulation is not possible.

liberalization led growth in a globalizing India. Women's work participation rates also fell, although the thesis that globalization leading to feminization of labour remained in play even in academic discourses for much longer than was warranted by the evidence. These general tendencies were of course embedded in a continuing processes of social differentiation involving shifts in caste and community co-relations that also seemed to be reaching a new stage. The long term implications of these developments will no doubt engage theorists of all hues and disciplines, but at the policy level, responses to critical pressure points have been of a temporizing nature, and marked by some of the contradictory pushes and pulls discussed earlier.

For example, MGNREGA in 2005 and indeed the National Food Security Act in 2013 - one guaranteeing some employment on demand, and the other aiming to provide subsidized food-grains to a majority of households - both came in response to agrarian and rural distress. Yet, notwithstanding these exceptional but path-breaking legislations that enjoined the state to provide guaranteed employment and food, the general policy framework remained on the neo-liberal track of reducing direct state intervention in the economy, or what has come to be known as LPG (Liberalisation, Privatisation, Globalisation) with which state policy vis-à-vis labour was also being aligned. A shift to market regulation of labour relations rather than state regulation was a key objective.

The volatility in employment patterns and the money economy that unfolded over the decades since the 1990s, had no policy solution within the neo-liberal framework. Plummeting female work participation rates, falling numbers and proportions of cultivators, debt crises continue to be hallmarks of contemporary period. When the 2011 census showed an absolute fall in the numbers of cultivating peasants for the first time in the history of independent India, it was accompanied by a relative increase in both numbers and proportions of agricultural labourers. The indications of accelerated pauperization in the countryside became evident. Yet there has been little discussion regarding the other aspect of the same evidence, which was that the fall in the numbers of cultivators was driven primarily by a fall in the number of female cultivators, while the increase in the number of agricultural labourers was more male dominated.³³ In policy discussions around women's employment, migration or trafficking, these developments have not found any space as yet, and the lack of comprehension regarding their implications in determining the conditions in which women are migrating, is indeed striking.

With regard to labour, talk about the need for labour law reforms, sometimes referred to simply as labour reforms, and particularly with reference to the organized sector, has been a most sustained and dominant discourse of the liberalization era. Nevertheless, periodical reports and stories of forced labour and bonded exploitation, particularly in brick kilns, mines and quarries, could not be ignored by policy makers. Even official studies and reports suggested that the incidence of bonded labour was far higher than what was reported by the Ministry of Labour.

³³ Between the 2001 and 2011 censuses, the number of female cultivators fell by more than 5.9 million, more than double the fall of a little over 2.7 million among male cultivators. In contrast the increase in the number of male agricultural labourers by more than 25.4 million was more than double the 12.14 million increase in the number of female agricultural labourers.

A 2007 Report of the National Commission on Enterprises in the Unorganised Sector (NCEUS) held that where the unfree status of labour in traditional agriculture had undergone some change, bonded labour remained high in some segments of unorganised industry, and that the emergence of bondage in newer forms was one of the reasons that make it more difficult to enforce the existing legislation. The report thus drew a link between bonded labour and unorganized sector.

In the meantime, the Centrally Sponsored Scheme (CSS) for Rehabilitation of Bonded Labour that had been introduced in 1978 was revised in May 2000, and again in 2016. Since 2016, it is termed the Central Sector (CS) Scheme for Rehabilitation of Bonded Labourers, and State Governments are not obliged to pay the matching contribution in terms of cash assistance for rehabilitation of bonded labourers as was the practice earlier under the CSS, although no change in the nature and number of interventions has been visible. Like the earlier CSS, the 2016 scheme includes cash assistance, survey, awareness and evaluation studies in its guidelines. Financial assistance for rehabilitation was increased from Rs. 20,000/- per beneficiary to Rs 1 lakh per adult male beneficiary, 2 lakh for children, orphans, forced child labour and 3 lakh for woman or children rescued from ostensible sexual exploitation. Unlike the earlier CSS, the full cash rehabilitation assistance is however, not released to bonded labour till after conviction of the accused. Reportedly, due to poor conviction of accused, only Rs. 20,000 is actually being transferred as immediate assistance to bonded labour - not the full financial assistance (Jawed Alam Khan, 2019).³⁴ The cost for Survey of Bonded Labour was also increased from 2 lakh to 4.5 lakh per district, and a Bonded Labour Rehabilitation Fund with at least Rs. 10 lakh corpus, to be created at District level by each State.

Flux in Labour Policy: Situating Unfree conditions of migrant women workers in the changing scenario

With 'Labour Law Reforms' having been on the agenda for India since the 1990s, fundamental changes in labour policy in India have been an ongoing process for some time, albeit in piecemeal fashion till 2015. The legislative and non-legislative changes that have taken place over some two and a half decades are too many to list or discuss in detail in this paper. However, some key elements of the thrust of change in the labour policy regime include a) procedural changes in labour administration directed at curtailing the inspection systems and greater emphasis on exemptions and self-certification of compliance with labour laws b) legislative and executive changes directed at increasing flexible employment relations, thus increasing pressures on workers to be perennially on the move c) Restructuring of premises and principles of social security for workers and d) imposition of additional conditions and restraints on registration of trade unions, industrial actions and collective bargaining. These elements are also inbuilt into most of the new legislations and schemes for unorganized workers.

³⁴ It remains unclear as to what was in the mind of the government regarding the rehabilitation package for bonded labour, which indeed also should be applicable to trafficking victims, when it tabled the bill on trafficking, whose provisions for rehabilitation were quite different. Further, where the bonded labour rehabilitation package is linked to conviction of the accused, the trafficking bill had delinked rehabilitation from the legal process against the accused.

In the legislative and non-legislative fields of labour law and policy

Since 2015, however, far reaching changes are being sought to be brought in together through a process of consolidating and ‘rationalising’ existing labour laws in a set of labour codes. Part of the agenda of accelerated labour reforms, the code making process has introduced new elements of flux in the fields of labour law and policy. What is proposed is that 44 labour laws should be replaced by 4 consolidated Labour Codes. Of four proposed Codes covering 1) Wages, 2) Social security, 3) Industrial Relations, and 4) Occupational Safety, Health, and Working Conditions, only the Code on Wages had been tabled in parliament (August 10, 2017). Like the bill on trafficking, it has since lapsed.³⁵ Reportedly, a decision has been taken (at an inter-ministerial meeting chaired by the new Home Minister) in June 2019, to introduce ‘a new labour bill’ in the July-August session of parliament in 2019. Whether this signifies a reintroduction of the Code on Wages or more remains to be seen.

Even as the legislative process around the Labour Codes has been underway, changes in the foundational principles of labour law in India have been effected by amending the rules of individual labour laws through Government Orders and Notifications without any reference to parliament. In March, 2018, 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, 2018.³⁶ 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 already 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.

The implications of the withdrawal of any restrictions on fixed term contracts as regards migrant women workers, who have rarely enjoyed the protections in labour laws, 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 implications become more apparent. We have earlier referred to the practice of recruiting young and adolescent workers from rural areas by textile and apparel firms in Tamil Nadu, under the so-called ‘Marriage Assistance Scheme’ or the ‘Camp Coolie system.’ When such schemes were challenged in courts, 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 or Marriage Assistance Scheme, were addressed inside and

³⁵ The Code on Wages Bill, 2017, aimed 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.

³⁶ 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 16 th March, 2018

outside the courts is particularly relevant for understanding some of the implications of the current thrust of labour policy for young migrant girls.

First, a few words about the manner of recruitment and the nature of the contract that the mills in Tamil Nadu used. R. Vaigai, appointed amicus curae 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. 32,000.³⁷ 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 would designate. 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 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.³⁸

Thirdly, the restrictions imposed on the movement of girls by the mills was 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. 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 on establishments where the Sumangali or Camp Coolie system was in place, and that appropriate recommendations be made for regularization of the workers 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

³⁷ 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 curae.

³⁸ 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)

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.³⁹ 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 under labour law.

In 2009, the Madras High Court also dismissed 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). Again in 2016, the High Court also directed the State Government to follow up on the recommendations of the reports of the monitoring committees, most of which had (as mentioned above) recommended regularization of employment for the girls recruited under such temporary contracts. Following the amendment to the Standing Order Rules, the momentum that had been gained (with the help of judicial intervention) towards regularization of the so-called apprentices, is likely to be rolled back by the acceptance of fixed term employment in the Standing Order rules.

It requires mention here that apart from the 2018 amendment to the Standing Order, a 2014 amendment to the apprenticeship law also had adverse implications for the process of regularization of these migrant women workers. According to The Apprentices (Amendment) Act, 2014, a) the minimum age was set at 14 for apprenticeship in trades related to non-hazardous industries (where apparel and textiles are not included); b) it permitted employers to engage apprentices from other states; c) it removed imprisonment as a punishment for employer violations; d) it permitted employers to determine the hours of work of apprentices.⁴⁰ The net result is that some of the extra-exploitative and coercive conditions of schemes and practices vis-à-vis apprentices that were earlier subject to challenge, 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 be accept the harsh conditions of work on offer, migrants are being brought in from other states such as Odisha and Jharkhand.⁴¹

Migrants, unorganized workers, and the changing laws

Turning to other categories of migrant workers for whom the Inter-State Migrant Workmen's Act (ISMWA) would apply, it may be mentioned here that the stipulation that migrant workers'

³⁹ 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.

⁴⁰ 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,

⁴¹ Personal communication by a consultant for spinning mills in Coimbatore in January, 2018.

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.⁴² 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 adding to the benefits of others.

The nature of this problem came to the fore for domestic workers, another category of unorganised workers who are predominantly migrants and poor, when it was announced in 2016, that domestic workers were being included as 'other beneficiaries' under the Employees State Insurance Corporation (ESIC) for medical benefits and health insurance. In the office order giving effect to this announcement, domestic workers, so included, were granted only some of the otherwise fairly comprehensive benefits provided for under the ESI Act. For example, no artificial limbs or prosthetics will be provided for domestic workers, and it was stipulated that family members can only avail of benefits in the state in which the worker is registered. Most significantly, domestic workers were placed in the category of 'self-employed workers' by the ESIC. The onus for payment of 'user contribution' was thus placed on the 'insured person' (worker) and unlike under the ESI Act, there was no compulsion on the employer to contribute.⁴³ 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 to 'self-employed' workers. Further, 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. It 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.⁴⁴ 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 sharply critiqued as not taking into account the needs of the workers, and simultaneously eroding the egalitarian

⁴² See Ramapriya Gopalakrishnan, Handbook on Labour Law Reforms in India, ILO/ACTRAV, 2015.

⁴³ The worker's contribution is fixed at Rs 600 per quarter/Rs 200 per month.

⁴⁴ 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.

approach to benefits under the ESI Act (Neetha, 2017).⁴⁵ 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 protection from removal/dismissal of unorganised workers in general has not been accounted for. Such arguments are particularly applicable to 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 of employers. The casual setting aside of differences in relation to worksites, sectors, forms of mediation between workers and employers, etc. and adopt a ‘one size fits all’ approach is one of the factors propelling the holding back of advances made by the struggles of several categories of workers, including 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. The Act 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.⁴⁶ 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 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, such as 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’.⁴⁷

Apart from having no worker entitlements, of the list of what are termed ‘Social Security Schemes for the Unorganised Workers’ in the Act, almost all have a below poverty line (BPL)

⁴⁵ Neetha also 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.

⁴⁶ 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.

⁴⁷ 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.

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 social security. 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.

Women Workers in the changing scenario of Labour Law: Some Observations

The Code on Wages that was 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 on 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.⁴⁸ 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 conferred a legal status in the Wage Code.

Despite the claim 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 in its 2017 form 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.

⁴⁸ 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 (a reduction 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 the two drafts Draft Codes on Social Security and on Occupational Safety, Health and Working Conditions, placed in the public domain by the Govt in March 2018, shows that while significantly feminizing domestic workers and homebased workers are included in the draft on social security, they are again left out of the Code 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, and which have a long history of being below subsistence level, it appears that the proposed architecture will lean 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. It seems that sexual harassment in the workplace is not considered 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, the enforcement authorities do not include anyone from the labour law enforcement machinery. The District officer charged with enforcement 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 law 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 gender 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)⁴⁹ 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 of 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 discussion on the elements of flux and change in labour law and policy, a question that needs to be asked is how the gender segregated tracks being followed in the processes of changing labour laws will be perceived by women workers and workers' organisations in the coming period. An element of detaching women workers from the broader movements of workers seems to be implicit to the process. 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.

⁴⁹ Low performing states include Uttar Pradesh, Uttarakhand, Bihar, Jharkhand, Madhya Pradesh, Chhattisgarh, Assam, Rajasthan, Odisha, and Jammu and Kashmir

References

- Agnihotri, Indu and Indrani Mazumdar (2009): 'Dusty Trails and Unsettled Lives: Women's Labour Migration in Rural India', *Indian Journal of Gender Studies*, no.16.
- Ashutosh Kumar, 'Indian Nationalists and the End of Indentured Emigration', NMML Occasional Paper, Nehru Memorial Museum and Library, HISTORY AND SOCIETY, New Series 48, 2014
- Brass, Tom (1995): 'Reply to Utsa Patnaik: If the Cap Fits . . .', *International Review of Social History*, Vol. 40, No. 1, pp. 93-117
- Breman Jan (1978): 'Seasonal Migration and Co-operative Capitalism: Crushing of Cane and of Labour by Sugar Factories of Bardoli', *Economic and Political Weekly*, Vol. 13, No. 31/33, Special Number (Aug., 1978), pp. 1317-1360
- Breman, J, (2007) *Labour Bondage in West India; From Past to Present*. Oxford University Press, New Delhi
- Breman, Jan (1996): *Footloose Labour: Working in India's Informal Sector* Cambridge University Press
- Chakravarty, Lalita (1978): 'Emergence of an industrial Labour Force in a Dual economy: British India, 1880–1920', *IESHR*, vol. 15, no. 3
- Chandrasekhar, C. P. (2010) 'Liberalising loot', *Frontline*, Volume 27 - Issue 14 :: Jul. 03-16
- Code on Wages, *Bill No. 163 of 2017* As Introduced in the Lok Sabha
- Constituent Assembly Proceedings, (1948) Friday, the 3rd December
- CWDS, (2012), *Gender and Migration: Negotiating Rights, A Women's Movement Perspective, (Key Findings)*, <http://www.cwds.ac.in/researchPapers/GenderMigrationNegotiatingRights>
- CWDS, (2012): *Gender and Migration: Negotiating Rights, A Women's Movement Perspective, (Key Findings)*, <http://www.cwds.ac.in/researchPapers/GenderMigrationNegotiatingRights.pdf>
- Dasgupta, A K, Socialistic Pattern of Society and the Second Five Year Plan, *The Economic Weekly Annual*, January, 1957.
- Gopalakrishnan, Ramapriya (2015) Handbook on Labour Law Reforms in India, ILO/ACTRAV
- Govt. India, 12th Plan, Vol 2, p. 298.

- Govt. India, 8th Five Year Plan, Vol. 2, Social Welfare.
- Govt. India, Ministry of Labour & Employment, Labour Code on Social Security 2018, Version 2.1
- Govt. India, Ministry of Labour & Employment: The Draft Labour Code on Occupational Safety, Health and Working Conditions 2018.
- Govt. India, Ministry of Skill Development and Enterprise, Common Norms with Amendments, Notifications dated 15/07/2015 and 20/05/2016
- Govt. India, MoRD, (2015) Migration Support Centre Reference Framework, DDU-GKY
- Govt. India, MoRD, MGNREGA Sameeksha 2006-2012 and UNDP, MGNREGA Sameeksha II, 2012-2014.
- Gyan Prakash, *Bonded Histories: Genealogies of Labor Servitude in Colonial India*, Cambridge University Press, 1990.
- http://mnregaweb4.nic.in/netnrega/all_lvl_details_dashboard_new.aspx
- W. A. Lewis (1978), *The Evolution of the International Economic Order*, Princeton University Press
- N.Neetha, (2017) 'Employees' State Insurance Scheme for Domestic Workers: Yet Another Mockery' March 18, *Economic & Political Weekly*.
- NABARD, Status of Micro-finance in India, 2016-17
- Nandan, Rohit (2016) 'Apprenticeship - the most power vehicle for Skill India' Press Information Bureau, Special Service and Features, 12-August-2016 15:46 IST
- Narayan Banerjee, *Women, Participation and Development: A Case Study from West Bengal*, (1984), and *Seasonal Migration: A Case Study from Bengal*, (1991), CWDS.
- National Crimes Record Bureau. Ministry of Home Affairs, *Crime in India, 2016*
- NCEUS (2007) Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector.
- Omvedt, Gail (2004) *Ambedkar: Towards an Enlightened India*, Penguin
- Patwardhan, R. P. , D. V. Ambekar, Dattātreyā Gōpaḷa Karve (eds) (1962), *Speeches and writings of Gopal Krishna Gokhale*, Vol. 1, p. 349 to 358.
- Prabha Kotiswaran, (2016) 'India's New Anti-Trafficking Bill is an Empty Gesture' *The Wire*, 05/07/2016

Prabha Kotiswaran, (2018) Rethinking trafficking, *The Hindu*, February 13, 2018

Press Information Bureau, Government of India, Ministry of Women and Child Development, 28-February-2018 18:51 IST, Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018

On Capitalism and Agrestic Unfreedom

Patnaik, Utsa (1995), *International Review of Social History*, Vol. 40, No. 1, pp. 77-92

Published by: Cambridge University Press

PRS Legislative Research: Draft Labour Code on Industrial Relations, 2015
<http://www.prsindia.org/downloads/draft-bills/>

R. Vaigai, '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.

Rana, Behal (2013): Coolies, Recruiters and Planters: Migration of Indian Labour to the Southeast Asian and Assam Plantations during Colonial Rule. In: Crossroads Asia Working Paper Series, No. 9.

Ravi Srivastava (2005): Bonded Labor in India: Its Incidence and Pattern, ILO Special Action Programme to Combat Forced Labour WP/43/2005, International Labour Office Geneva

Roy, Tirthankar (2008) 'Sardars, Jobbers, Kanganies: The Labour Contractor and Indian Economic History, *Modern Asian Studies*, Vol. 42, No. 5 (Sep., 2008), pp. 971-998

Ruthven, Orlanda (2016) 'All Aboard the Job Train: Government Funded Training and Recruitment in India's Apparel Industry, in Bina Fernandez, Meena Gopal, and Orlanda Ruthven (eds) *Land, Labour, Livelihoods: Indian Women's Perspectives*, Palgrave Macmillan.

Ruthven, Orlanda, (2017) 'How to 'Skill India' When the Jobs are Bad', *The Wire*, 11/Sep/2017, <https://thewire.in/economy/skill-india-narendra-modi-jobs-in-india-unemployment>

Shramshakti, Report of the National Commission on Self Employed Women and Women in the Informal Sector, 1988, p.72.

SOCO Trust and Actionaid (2014): *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* accessible online at

<https://9dd22cecb57cc7c49673951a-f4ofpqic7vvq2ruqx.netdna-ssl.com/wp-content/uploads/2017/07/Macro-Level-Understanding-of-Sumangali-Scheme....pdf>

Sundarayya, P. (1972): *Telengana People's Struggle and its Lessons* Ganashakti, Calcutta, 1972.

T S Sankaran (2002), the Report of the Petitions Committee of Lok Sabha, the Report of the Parliamentary Standing Committee

T S Sankaran (2009), A Critique of India's Unorganised Workers' Social Security Act, 2008, <http://www.sacw.net/article658.html>

Teerink, Rensje (1995): 'Migration and Its Impact on Khandeshi Women in the Sugar Cane Harvest', in Loes Schenk-Sandbergen (ed), *Women and Seasonal Labour Migration* (New Delhi: Sage).

Thorner, Daniel and Alice (1962), *Land and Labour in India*. Bombay: Allied Publishers.