Crossroads and Boundaries

Labour Migration, Trafficking and Gender

INDRANI MAZUMDAR, NEETHA N

The absence of a gender perspective in the labour laws and the absence of any labour rights perspective in the anti-trafficking frameworks are the twin flaws that are particularly detrimental to the interests of migrant women workers in India. A corrective course that is cognisant of both the gender structures in labour relations and the gendered employment crisis is the need of the hour, if the state's obligations under the Constitution are to be fulfilled.

The authors acknowledge the support of the International Labour Organization's Work in Freedom programme for much of the research that has gone into this paper.

Indrani Mazumdar (*indrani.mazumdar@gmail.com*) and Neetha N (*neethapillai@gmail.com*) are research faculty at the Centre for Women's Development Studies, New Delhi.

Volatility in livelihoods and growing unemployment are compelling more number of women to find work by migrating. The absence of engagement with the social realities that shape women's labour relations characterising the labour laws, and an overly sexually charged cloud over anti-trafficking interventions and discourses, both are adversely affecting the migrant women workers' situation. Fundamental changes in labour laws and their replacement by four labour codes have coincided with a thrust to widen the definition of trafficking to include forced labour. Yet, the connections between the two tracks have received little attention in public debates. However, it is high time for a corrective course that is not only informed by socio-historical processes, but also takes cognisance of both the gender structures in labour relations and the gendered employment crisis, if the state's obligations under the Constitution are to be fulfilled.

Constitutional Rights and Labour Laws in India

The right to move freely and to reside and settle in any region or state in the territory of India—including for employment—is granted as part of the Right to Freedom (Article 19). Article 16, on the other hand, provides for non-discrimination in employment, on the grounds of religion, race, caste, sex, descent, or place of birth under the Right to Equality. Such rights are of course based on the presumption of migration by "free" labour, given that the Right against Exploitation (Article 23) enshrined in the Constitution explicitly prohibits human trafficking and other similar forms of forced labour.

It should be axiomatic that the spectrum of labour laws that govern wages, employment relations, and social security apply to both migrant and non-migrant workers; so also do the unique provisions for the countervailing force of collective action by workers against the inequalities of power in employment relations. As argued by Otto Kahn-Freund (1972):

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

Such a framework is in line with the historical experience that laws and regulations in favour of labour emerged when actions by masses of workers became a threat to the prevailing

norms of order. It is well to remember that the bedrock of rights of workers in India was established at the dawn of independence on the crest of a wave of industrial actions that had dovetailed into the freedom struggle.

While the Constituent Assembly was in session, the Factories Act 1948 set the benchmark for the regulations regarding conditions of work, the Minimum Wages Act 1948 (MWA) for the statutory minimum wage for all workers, including the outworkers and employments outside factories. The Employees' State Insurance Act (ESI), 1948 provided a framework for health benefits (including maternity), and the provident fund for coal workers in 1948 followed by the Employees' Provident Fund Act (EPF), 1952 made provision for post-employment/retirement.[1] These social rights were however, not independent of the conflicts between labour and capital, given the cognisance by the Industrial Disputes Act, 1947.[2]

Most factory workers and other unorganised urban workers were migrants at the time, as is still the case. And yet, the prevalence of distress-driven circular or seasonal migration—producing the unfree conditions of work—is not easily dealt with by the normal structures of labour laws in India. For instance, many key labour laws become applicable only above a threshold of 10 to 20 workers, assume the availability of perennial employment, are premised on an employment contract with "free" labour, and are geared towards direct rather than contractor-mediated employer–employee relationships.

Gender and migration in labour laws: Further, a narrow outreach of labour laws has long undermined and limited its democratising force by denying a majority of workers' access to key entitlements, such as women workers. Despite the constitutional direction to the state to ensure "equal pay for equal work for both men and women" (Article 39), the Equal Remuneration Act (ERA), 1976 was enacted only after the recommendation of the Committee on the Status of Women in India (CSWI) in the 1970s. Even today, the ERA remains insubstantial in implementation (Mazumdar et al 2000).[3] Feminised paid domestic work (mostly migrant) and female intensive home-based manufacturing remain bereft of the regulations for providing the minimum rights granted in the labour laws.

On the other hand, if migrant workers are segregated into a separate legal category from non-migrants, would it not weaken workers' collective bargaining, a foundational principle of labour law? The natural question as to whether migrants should be treated as a special class of workers, thus, has complexities that do not admit to simplistic answers.

The Inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) Act, (ISMWA) 1979 has been the only labour law in India for internal migrants. It addressed contractor-mobilised migration, where advances are paid for recruitment as a norm. It excluded intrastate migrants from its ambit and is not applied to vulnerable situations of these migrant workers who may be 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 (BLSAA) as an intervention against labour bondage in migration.[4]

The BSLAA commands an iconic status, since it illegalised bondage induced by customary relationships and debt, as well as their manifestation in imposing constraints on contract labour and interstate migrants. It thus addresses debt-based bondage and feudal caste-based systems of forced labour. It includes rehabilitation financed by the union government, and the implementing authority is the district collector/magistrate. And finally, it was given constitutional status in the Ninth Schedule. More powerful administrative structures and resources were pressed into action by the law against bonded labour in comparison to other labour laws.

The ISMWA, on the other hand, operates through the labour departments of different states for regulating the contractors who mediate migration, and was preceded by the Contract Labour (Regulation and Abolition) Act (CLRAA), 1970. The evolution of the multitiered labour contractor system, as a coercive feature of labour migration in India, has colonial roots, with historical studies aptly describing the contractors as patriarchs or labour lords (Chakravarty 1978).

In migration streams addressed by the ISMWA, the norm is of wage advances to the families well before they migrate, for the work that is usually seasonal, and where women are often recruited as part of family units rather than as individuals. Since wages are generally paid to family heads, women are effectively denied an independent wage (Agnihotri and Mazumdar 2011; Teerink 1995). This typical condition was not, however, addressed by the only law for migrant workers in India, representing a tendency to ignore women's independent identity as workers.

Despite their lineage in the Constitution, it is well to remember that both BLSAA and ISMWA were conceived under the shadow of an authoritarian emergency regime (1975–77) that repressed working-class power, but sought to gain political support by invoking socialist rhetoric.[5] Perhaps, inevitably, both laws contained a top-down approach and did not engage with worker representation or workers' voice.[6] While the BLSAA has not succeeded in eliminating several forms of bonded labour, the ISMWA is recognised as a most ineffectual labour law (NCEUS 2007). The ISMWA, of course, mentions equal pay "irrespective of sex," and lists the Maternity Benefit Act as applicable, which specifies employers' liability to pay maternity benefit at the rate of the average daily wage. However, this does not work where women do not have an independently calculable wage.

Surprisingly, despite decades of legal activism on issues of bonded labour, a perspective on the specific forms of bondage of women labour migrants has remained undeveloped. No data is available on the number of women workers released from bondage, and neither is there any discussion on the calculation of independent wages for women when family units of labour are paid at piece rates. Significantly, the 1982 Supreme Court judgment that extended the definition of bonded labour to include all workers who are paid less than the statutory minimum wage, is still to be given procedural or administrative effect.[7]

Further, the BSLAA and the ISMWA have not been applied to forced-labour like conditions imposed on young women and girls working in modern industries. For example, spinning mills and some garment factories in Tamil Nadu have been recruiting young women and girls from poverty-ridden rural hinterlands, and keeping them in residence/hostels on the premises and/or under the control of factory managements/employers. The modus followed was: (i) getting girls or parents to sign bond contracts (usually for three years), (ii) designating production workers as apprentices for long periods and working night shifts (though not legal for apprentices), (iii) denying them minimum wages and exercising control over their movements even beyond the working hours, and (iv) promising a lump sum—much lower than their dues at minimum wage rates (Vaigai 2016)—at the end of the contract period. A special camouflage was the naming of such a practice as "Sumangali" (meaning the happy and blessed married woman) or "marriage assistance" (read dowry). It is significant that the laws against migrant bondage were not applied for them, even in the court cases. Perhaps the gender blindness of the laws affected even the judicial minds, particularly vis-à-vis non-traditional/industrial forms of female labour.

Anti-trafficking Law and Policy

At the other end, women were in central focus in Suppression of Immoral Trafficking in Women and Girls Act, 1956 (SITA), which 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. Female prostitution and brothels remained central to the renamed Immoral Trafficking (Prevention) Act (ITPA) in 1986.[8] Legislations against trafficking, down to the Criminal Law (Amendment) Act, 2013, which gave trafficking a legal definition, appear to have always been more shaped by international conventions and protocols than by ground-level experience.

Entangled questions, repressive practices: 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, 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. The consent of the victim is immaterial in the determination of the offence of trafficking. Exploitation is 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. Such a definition draws almost word for word from the United Nation's (UN) protocol to prevent, suppress and punish trafficking in persons, especially women and children (Palermo Protocol), which was adopted in 2000, although it leaves out the parts that refer to abuse of a position of vulnerability and to forced labour (Kotiswaran 2017).

Yet, forced labour and sexual exploitation for prostitution are the two major purposes of trafficking recorded in National Crime Records Bureau (NCRB) reports, with much smaller proportions under other heads (domestic servitude, forced marriage, begging, petty crimes, etc). Forced labour accounted for more than 45% of the recorded victims of trafficking in 2016, when the total number of recorded victims of human trafficking had reached 23,117.[9] By 2018, however, forced labour had dropped to 20% of a much smaller number of trafficking victims at 5,264.[10] Unfortunately, gender disaggregated figures on purpose of trafficking are not available, but it seems that more male victims are recorded under forced labour and the majority of females under sexual exploitation.[11]

After 2015, the NCRB reports stopped providing details of the laws under which trafficking cases were registered.[12] So, it is unclear as to which laws have been used in the cases of trafficking for the purpose of forced labour. Data on Section 370 (and 370A) is available only for 2014 and 2015 (reporting 720 and 1,021 cases, respectively). For the older laws, such as Section 366A (procurement of minor girls for illicit sex) and ITPA, the former was on a rising graph from 171 cases in 2003 to 809 in 2012, followed by an exponential jump to 3,087 by 2015. The ITPA cases, on the other hand, were 5,503 in 2003 (at 94% of all trafficking cases), but declined in numbers and share after 2005. By 2015, the ITPA accounted for just 38% of all trafficking cases in comparison to the 45% under 366A.[13]

A further decline in the number of cases under the ITPA after 2015 is most likely due to a new legislation on the anvil. An impetus to anti-trafficking interventions is visible in the aftermath of India signing the Palermo Protocol, including proposals to amend the ITPA in 2006, establishment of anti-trafficking units in most states, a special chapter on trafficking in the NCRB reports from 2007, and tabling of the Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018 (that lapsed in 2019).

Much of this impetus is driven by international debates and goals. For example, goal 8.7 of the Sustainable Development Goals (UN 2015) calls for measures to "eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour." The terms used are often set, as in the case of the Palermo protocol, by a few countries. Attached to the Convention against Transnational Organised Crime, the final protocol was similar to the draft presented by the United States Government (Brand 2010), for whom, arguably, the anti-trafficking thrust was not unrelated to an increasingly repressive position on immigration. Internationally honed perspectives do not always resonate with Indian circumstances, and their rhetorical consensuses need far greater critical evaluation and consideration of their ramifications in intersectional local and social spaces.

Women in India often find themselves at odds with oppressive and caste-based notions of "honour;" particularly, young women who go out to work are subjected to a degree of stigma. Public discourses, policies, and police actions around trafficking can, arguably, become instruments to further

subvert the freedoms of women. An anti-trafficking framework that is devoid of a perspective on the rights of women as workers would, in our view, inherently display such a tendency.

This is illustrated in a recent study (CWDS 2019) that described the scenario of anti-trafficking interventions in Berhampur, considered to be a conduit station for trafficking in Odisha. A child rights non-governmental organisation (NGO), working with the anti-trafficking unit of the district police, keeps a lookout for groups of girls alighting at the city bus stop. The NGO personnel then follow the girls. The girls try to escape surveillance by running into a temple or church. The NGO informs the police, who pick up the girls at the railway station or the train, hands them over to the NGO-run hostel. Frequently, "rescued" girls try to run away, while others are returned to their villages. [14]

A village to which two girls had been so returned, was a field site for the above study. A number of young women belonging to the numerically preponderant caste of Panos (stigmatised as "untouchable"), had been migrating from there for live-in domestic work in Mumbai, Hyderabad, and Kerala for several years. The two girls who were perceived as being trafficked were among such migrants. Villagers reported that their families had moved out because of the infamy that the news of the girls being "arrested" brought to them. Here "rescue" was perceived as "arrest." Since they were surveilled, pursued, picked up by the police, forced into the hostel and then returned to their village, such a perception is not unwarranted.[15] In these villages, it was common for young women migrants to be taunted as "characterless," because they went out for work. An "arrest" could only add further social opprobrium, with negative consequences for both the girls and their families.

Aggressive curbs on these young women, have increased since paid domestic work became illegal for older teenagers. The Child Labour (Prohibition and Regulation) Amendment Act, 2016 prohibited the employment of adolescents in the age group of 14 to 18 years in "hazardous occupations," which included domestic work. In the tendency to conflate child labour and adolescent migration with trafficking, the need for regulating conditions of work in a key sector like domestic work is ignored.[16]

The reality, as evidenced in the accounts of the adolescent migrants, shows complex family dynamics spawned by poverty that development pathways have failed to eradicate. Experiences of hunger, of not having enough to eat in their childhood, or a life-changing death in the family, occurred as repetitive motifs in the stories of several interviewees, particularly those who had been child migrant workers, in the Centre for Women's Development Studies' (CWDS) study. Worsening employment opportunities in rural areas have added to the distress. Despite a range of intermediaries, there was no evidence of any organised criminal gang of traffickers, when interviewees were followed-up at the destination. Often the mediators were those who the girls felt closest to—a grandmother, an aunt, a sister, a friend, etc. Aggressive criminalisation of such situations is clearly uncalled for, and merely becomes intimidation/harassment of young women migrating for work.[17]

Female Labour Migration: Contemporary Issues

Even as a strong male bias in labour migration persists, with men accounting for more than 80% of migrant labour in India, the rising numbers and proportions of women migrating for work are no less striking.[18] Census figures showed a spurt in female migration for employment and business (from around 41 lakh in 2001 to 85 lakh in 2011), and an increased female share of such migrants from 12% to 16%. Census data also showed a shift in the pattern of female labour migration from predominantly rural destinations to a distinctive tilt towards urban destinations. Forty-seven percent of all women migrating for work/business were in urban areas in 2001. By 2011, migration to urban destinations had jumped to 58%.[19]

Such a trend is likely to have been further enhanced since 2011, with the Periodic Labour Force Survey (PLFS) data for 2017–18, showing a further dramatic fall in work participation rates (WPR) among rural women by 7 percentage points from 24.8% to 17.5%, reflecting an absolute drop by close to 25 million women workers in rural India after 2011–12 and by just short of 47 million, if 2004–05 is taken as the benchmark year.[20] Although the decline is notable across all social groups, it is most for women from Scheduled Caste (SC) and Scheduled Tribe (ST) categories, with the WPR of ST and SC women dropping by about 10 percentage points during 2011–12 to 2017–18.

Such a large-scale, and historically unprecedented eviction of women from the rural workforce, especially of the most oppressed cates/communities, highlights the negative impact of neo-liberalism's growth paradigm—ramping up of agrarian distress, and an employment crisis that is highly gendered.[21] Stagnation in urban India, where female WPR are even lower, hovering between 15% and 14% across the decade of 2007–08, with just a small increase in absolute numbers, can hardly compensate. Nevertheless, the shift towards the urban in women's migration is obviously a key phenomenon of the times.[22]

The macro-data sets fail in helping us understand the nature of women's employment, especially in urban areas. Of the three broad categories of regular, self-employed and casual workers, the share of regular employment among women workers in urban areas is the category that shows consistent increase for more than three decades. It rose from 28.4% in 1993–94 to 42.8% in 2011–12, and then to 52.1% by 2017–18.[23] Prima facie, it is assumed that this denotes better forms and conditions of work for women workers. However, regular work is defined only in terms of duration of employment, irrespective of wages and other conditions of work. Thus, paid domestic work and other service sector employees, who may be working continuously during the year without minimum wages and on completely insecure terms, are counted as regular workers. The actual growth of temporary and casual employment is thus not adequately captured by the macro data, especially in the case of female employment.

The occupational profile of women's employment in the PLFS 2017–18, however, gives us a useful insight into the

contemporary pattern of urban women's employment.[24] Manufacturing workers constituted the single largest occupation for the female workforce in urban areas (45 lakh), of which 20 lakh were textile and garment workers, and another 16.5 lakh were in food processing, tobacco products (beedi workers) and leather goods. Teachers constituted another big chunk, with those in pre-primary to secondary education numbering around 21 lakh, and another 6.5 lakh in higher education. Domestic workers were around 20 lakh, with ayahs and childcare workers constituting another 4 lakh, while 11.3 lakh were shops and salespersons, another 11 lakh were in housekeeping and restaurant services, and 10.5 lakh were clerical workers. Around 10 lakh were construction workers. A little over 5 lakh were health professionals, of which more than half were nurses. Close to 4 lakh were garbage collectors and another 4 lakh were beauticians. Some 4.5 lakh were occupied in finance, business, administrative, police, social work, etc, and a surprising 16.6 lakh were directors and chief executives.[25] Together, these workers constituted around 79% of the 2.19 crore urban female workforce. Further, some 20% of urban women workers were home-based (Raveendran 2019).

Based on the census migration trends, one may assume that 10% to 15% would be declared migrant labours, although many more would be migrants who gave other reasons for migration.[26] It is of course difficult to categorically locate proportions of migrants among these workers, but from sector-based micro-studies, we can postulate that manufacturing workers, domestic workers, other care workers, nurses, construction workers, and garbage collectors are predominantly migrants, with an overrepresentation of women from marginalised caste groups.[27] All other categories of workers would indeed have migrants among them, but of a lesser order, and even less would be migrants from rural areas. Significantly, PLFS 2017–18 also showed that unemployment rates were highest among urban women, having risen from 5.2% in 2011–12 to 10.8% for usual status, and from 6.7% to 12.8% according to current weekly status.

What is important is that these migrant workers have a new location in labour law. Even though relations with contractors and other intermediaries of various types are quite ubiquitous, particularly in times of rising unemployment, the nature of coercion experienced by these women workers with unimaginable levels of job insecurity, and increased cost and demands of urban living, is qualitatively different from those addressed by the BLSAA and ISMWA or the prevalent framings of forced labour. For these workers, wages and other conditions of work are critical, and in this context the ongoing restructuring of the labour laws and the labour codes assumes particular importance.

Women Workers in Labour Codes

"Labour reforms" has been the buzzword of India's labour policy since the dominance of neo-liberalism in its economic policy framework since 1991. While the centrepiece of the arguments for such reforms is that labour laws in India are too many, and too protective, creating restrictive rigidities in the operation of the market, there is also another line of argument that finds labour laws only protecting the organised sector workers at the cost of the vast majority of unorganised and informal workers. Three decades of a policy discourse that sanctions the dismantling of the protective structures of labour laws in the name of "majority" of the workers, has shifted the balance towards the "ease of doing business" over workers' rights.

Currently, the focus of such change is on the four labour codes that are to repeal and replace some 30 labour laws. And among these codes, the one on wages has already become a law. We examine some implications of these labour codes for the women workers.

Code on wages (CoW): It defines an employee or a worker only in relation to the establishment or industry, thus precluding private households. It makes no mention of outworkers/home workers, among whom home-based beedi workers, at least, were earlier covered by the minimum wages and other regulations.[28] In its present form, the CoW thus disentitles the increasingly feminised domestic workers, who, over the past decade or so, had successfully fought for inclusion in the minimum wage schedules under MWA in most states. Home-based beedi workers, mostly women, are similarly disentitled to minimum wages, equal remuneration, mechanisms to ensure payment of wages, and entitlement to bonus.

The CoW's specific exclusion of apprentices has adverse implications for any entitlement to minimum wage for "sumangali" workers, who are designated apprentices.[29] Since the apprenticeship law—as amended in 2014—has (i) set the minimum age of 14 for apprenticeship in "non-hazardous" industries (including apparel and textiles), (ii) permitted employers to engage apprentices from other states and determine the hours of work, and (iii) removed imprisonment as a punishment for employer violations, its effects will be felt particularly by the extremely young interstate migrant women workers.

While the CoW retains the provisions of the ERA against discrimination on the grounds of gender in pay for same or similar work, it amalgamates the advisory board for minimum wages and the ERA committee for increasing employment opportunities for women into one single board. Its stipulation that one-third of the board representatives are to be women, may be an advancement in relation to minimum wages, but reduces the 50% stipulated earlier by the ERA.

Further, the (draft) central rules of the code propose to extend the normal working hours for all workers from the eight-hour norm (as in the Factories Act) to nine hours. Equally significant is that that there is no national minimum wage, and the criterion for calculation of minimum wages as laid down by the Indian Labour Conference (ILC) and Supreme Court, is not included.[30] Even the central government's floor wage does not provide a national floor, since the floor itself is to be different across different geographical areas.[31]

This code also gives the sanction of law to administrative restraints imposed on autonomous inspections. The replacement of surprise inspections by web-based pre-determined schedules and the reliance on self-certification of compliance by the employers have given a pro-employer tilt to the labour

administration, expressed in the changed designation of the labour inspectors to inspector-cum-facilitator.[32]

As such, the CoW adds neither universality, nor clarity, let alone any additional benefit, in comparison to earlier laws. Whereas, it nullifies some of the entitlements that had been acquired by women workers.[33]

Occupational safety, health and working conditions code (OSHWCC): Currently, this code, pending before the parliament, amalgamates 13 labour laws, of which 11 are for particular sectors/types of establishment (including for the beedi workers), the other two being the Inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) Act (ISMWA) and the Contract Labour (Regulation and Abolition) Act (CLRAA).[34]

This bill perhaps best illustrates the lack of wisdom in amalgamating a range of laws that address industry or sector-specific characteristics. In the range of enterprises from factories, to mines, plantations, motor transport undertakings, newspapers, beedi establishments, etc, with respect to which it defines an employee, again excludes private households. Hence, none of its regulations regarding safety, health, or working conditions (weekly and daily working hours, leave, overtime, night shifts, etc) are applicable to domestic workers or home-based workers as among the beedi workers. In fact, for the latter, the removal of "home worker" as the appropriate term to mean home-based work leaves it open to interpretation as to what is meant by workers working "outside" a beedi establishment/premises. Like the CoW, new provisions regarding electronic modes and systems have been specifically included, and so is a special category of audiovisual workers, but women workers from the poorer classes continue to be excluded.

OSHWCC has chapters that summarise the industry-based labour laws that are being repealed. In the process, some important health stipulations in relation to crèches under the Factories Act have been dropped. Plantation managements have been given the option to transfer liabilities and the responsibility for provision of medical facilities, housing, and food supplies to the government and panchayats. Under the Plantation Labour Act, 1951, employers had these responsibilities. Strangely, while protection against rain and cold is provided for transport workers, a similar provision that existed for the plantation workers, the majority of whom are women, has been dropped. The CLRAA and ISMWA are summarised together in such a way that the provision of paying migrant workers no less than the local wage rates is left out, the liability of the principal employers is reduced, and there is continued silence regarding the denial of independent wages to migrant women working in family units at piece rates.

"Special Provision Relating to Employment of Women" is the briefest chapter, which essentially sanctifies night work for women workers (after 7 pm and before 6 am), "with her consent," and without any obligation on the part of employers to provide safe transport. Such obligations were earlier necessary for exemptions to prohibition of night work for women under various acts, and specified for working journalists.[35]

Significantly, prevention and protection from sexual harassment finds no mention in the OSHWCC bill, and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act) has been kept out of the amalgamation process. While this raises a question as to why sexual harassment in the workplace is not considered a part of either occupational safety or working conditions for women workers, it draws attention to the fact that the POSH Act had also been kept out of the framework of the labour laws.

The enforcement authority under the POSH Act is the (additional) district magistrate or deputy collector; it is monitored by the ministry/department of women and child development, and no provision was made for the inclusion of any labour officer in any of its committees, let alone a female labour officer, which could have helped increase the presence of women in the labour law enforcement systems. Despite much debate on applicability of the POSH Act for unorganised women workers, its role in labour laws was never clarified. Such a subliminal tendency to segregate key workplace issues of women from the labour law framework, and/or to maintain the constituency of women workers as outside the working classes, has added to both the continued absence of gender perspectives in labour laws, and the denial of workers' entitlements to a large contingent of women workers. A corollary to such segregation is that the labour laws enforcement machinery remains gender insensitive to the detriment of the equality agenda in the labour laws.

Finally, the repetitive motif of leaving basic issues, such as limits to hours of work to "as may be notified by the appropriate government" in contrast to the strictly defined eight hours under the Factories Act, moves core rights under labour laws away from the legislative certainty to the discretion of the government (the opposite being the case when it comes to removing some rights of workers). Double wage rates for overtime in the OSHWCC means little if the normal hours of work are enhanced.

Code on social security (CoSS): This code specifically includes home-based workers and domestic workers in its definition of "wage worker" as well as "unorganised worker."[36] Although no actual social security schemes are specified in CoSS, it lists the types of benefits for "social security organisations," of which are the Employees' Provident Fund Organisation (EPFO), Employees' State Insurance Corporation (ESIC), National Social Security Board (NSSB) for unorganised workers, and the state level Building and Construction Workers' Welfare Boards (BCWWBs), whose administrative structures and modes of funding are delineated in the code. All schemes, under these social security organisations, have been left to "as may be framed" at the government's discretion, thereby creating uncertainty regarding the well-functioning existing schemes.

Considering the accumulated experience of a variety of existing schemes, some of which have been implemented centrally for more than 60 years by the EPFO and ESIC, their lack of delineation generates more uncertainties, rather than security.[37] Schemes with a shorter life, such as CESS funded by the BCWWB, which are still evolving, or the NSSB, which in the absence of any other fund source, had largely declared

pre-existing central social assistance schemes for the below poverty line (BPL) category citizens as schemes for the unorganised workers.[38] While the above social security organisations remain operative under the code, welfare funds for beedi workers that were earlier cess based, are not mentioned. Instead beedi workers are to be covered by the NSSB for unorganised workers, despite the schemes being of a lesser order than what was available under the Beedi Workers' Welfare Fund. COSS is silent about other sectoral cess-based welfare funds and organisations.[39] While the thresholds for the applicability of the EPF (establishments with 20 or more employees) and the ESI (10 or more employees) schemes have been retained, for the cess funded welfare schemes under the BCWWF, COSS is silent on whether the brick kiln workers would be included.[40]

The chapter on maternity benefits in COSS reiterates the provision for 26 weeks' paid maternity leave by employers, and the discriminatory provision for a maximum of 12 weeks' leave for any pregnancy beyond two children, as introduced by the 2017 amendment to the Maternity Benefit Act. It also reiterates the provision of crèches with four visits a day for establishments with 50 or more workers, and all other health protective provisions from the original 1961 act. The chapter remains applicable only to organised sector—factories (minimum 10 workers with power, and 20 without), mines, plantations (minimum 10 workers), government institutions, and shops or establishments with 10 or more workers. For unorganised workers and construction workers, maternity benefits as provided by their respective boards (not employers) are in the form of cash assistance. These range from transfers conditional upon institutional delivery under the public health programme of Janani Suraksha Yojana (JSY)—₹700 for high performing and ₹1,400 for low performing states—to ₹6,000 under the 2018 Model Welfare Scheme for Construction Workers of the central government.

Considering that even the top end of these schemes (as also other public health schemes for maternity assistance such as the Pradhan Mantri Matru Vandana Yojana) is equivalent to just 22 days at wage rates under the Mahatma Gandhi National Rural Employment Guarantee Scheme (MGNREGS) in Haryana and 35 days for Bihar (MGNREGS wage rates taken as a proxy for a national floor), the absence of any criteria for calculation of maternity assistance for construction and other unorganised sector workers that could be equal to 26 or even 12 weeks of paid maternity leave, is particularly glaring.

Industrial relations code (IRC): This bill assumes a special importance for women workers.[41] A dynamic and increased role being assumed by women in the trade unions, is evident not only in their increased visibility, but also their share in membership. Women's membership reached 32% of total trade union membership in 2014, which is far greater than women's share in the country's workforce, hovering between 22% and 23% between 2011–12 and 2017–18.[42]

All trade unions, without exception, have opposed the IRC for imposing restrictions on strikes by universalising and adding to prohibitions that were earlier only applicable to public utility services.[43] The IRC stipulates (i) sixty days' notice and prohibits any strike within 14 days of such notice; and (ii) no strike during the pendency of proceedings before a conciliation officer or tribunal, and within seven days after the conclusion of conciliation, and within 60 days after conclusion of proceedings before a tribunal. It additionally allows anyone to initiate direct proceedings (without requiring a reference from the conciliation machinery as earlier), so an individual can just go to a tribunal and render strikes illegal. It also redefines strikes to include mass casual leaves. In all, under such conditions, almost no strike can be legal. The IRC thus denies workers a basic right and/or mode of protest against the employer or state exploitation.

It also gives legislative sanction to fixed term employment (FTE) that had been introduced by a backdoor amendment to the rules under the Industrial Employment (Standing Orders) Act in 2018, thereby removing restrictions on easy hire and fire. FTE has particularly adverse implications for the "sumangali" workers, who have been fighting for regularisation after their peculiar fixed term contracts come to an end.

In relation to the trade unions, all of the 2001 amendments to the Trade Union Act, 1926, which were introduced as part of the neo-liberal reform's restrictive agenda for unionisation, have been incorporated in the IRC. These include: (i) the stipulation that union registration would require at least 10% of the workers in an establishment/industry or 100 members (as opposed to the original requirement of just seven workers to begin with), and (ii) restriction on the number of office bearers to half for the unions of unorganised workers and one-third for other unions. While restricting the number of whole-timers that a union may need by fiat, apart from interfering with the workers' right to elect their leaders as they see fit, these stipulations have made it increasingly difficult to register unions, particularly for the unorganised segments such as the domestic workers or home-based workers.

The IRC retains provisions that provide unions with immunity against certain forms of civil action on the grounds of breaking a contract of employment or for interfering with the trade, business, or the right of any person to dispose of his capital or labour, as well as immunity against criminal action on the grounds of criminal conspiracy, which were part of the act of 1926. But given the restriction on strikes, and sweeping powers conferred on the government to exempt any industry from the application of this code, it again means little for labour welfare.

In all, the thrust of the IRC seemingly aims at subverting a basic framework of labour laws of allowing countervailing collective force of actions of workers against the inequality that inheres in their employment relationships. From our perspective, it seems that the labour codes, on the whole, have failed to address the absence of gender sensitivity in the labour laws, and/or the gap between the lip service to gender equality and the actual ground-level experience of the women workers.

Trafficking or Migration?

Although the Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018 has lapsed, it is useful to look at its provisions to understand the direction in which trafficking

law and policy is headed, especially with news reports that a slightly revised bill, with a change in nomenclature from the trafficking "of" persons to the trafficking "in" persons, would be introduced soon (Pandit 2020).

The 2018 bill had provided for additional offences over and above those defined by Section 370 of the IPC under the category of "aggravated form of trafficking." 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 a 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 them 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) offence resulting in pregnancy, or trafficking of pregnant women; (viii) by causing AIDS; (ix) for the purpose of begging; and (x) trafficking of a mentally ill person.

For such offences, a minimum imprisonment of 10 years extendable to life, was prescribed. Repeat offenders were to be imprisoned for the rest of their natural life. The bill introduced punishment of rigorous imprisonment up to five years for keeping or managing premises to be used as a place for trafficking. Unsurprisingly, even after the inclusion of forced labour in the definition of aggravated forms of trafficking, the bill made no provision for worker rights, entitlements, recovery of wage dues, or mechanisms to free workers without leaving them unemployed. It thus left the victims of trafficking to negotiate their livelihoods without access to any additional rights.

Second, along with the state and the district level committees and officers being given powers and responsibilities designed to support the penalising thrust of the bill, a National Anti-trafficking Bureau was vested with the extraordinary powers of surveillance to (i) co-ordinate and monitor surveillance and preventive efforts; (ii) facilitate surveillance, enforcement and preventive steps at source, transit and destination points; (iii) maintain co-ordination between various law enforcement agencies and NGOs and other stakeholders; and (iv) strengthen the intelligence apparatus to improve the collection, collation, analysis and dissemination of operational intelligence, etc. This is quite an extraordinary list of surveillance and intelligence activities, which implies spying on young women in their villages, while travelling in trains and buses, as well as elsewhere.

Third, in the name of "safety, care and protection of person rescued," even when the victim was not a minor, the magistrate was vested with the power to order that the victim be placed in a rehabilitation home and also the power to reject a voluntarily made application for release by the victim. Or in other words, the victims—whether minor or adult—could be held against her will in rehabilitation homes, opening the door to criminalising the "rescued;" as already illustrated by the Odisha case where young girls are being harassed at stations, bus stops and in trains, whereas the anti-trafficking units are being pressed into action in cases of elopement. What happens to the girls who are "rescued" when they are returned to their homes remains out of such a framework and is an area that cries for further research. Strangely, despite a lot of talk about rehabilitation, this area in the 2018 bill was considerably diluted in comparison to an earlier draft bill of 2016.

Our own field observations and other evidence at our command suggest that a criminal colour is being lent to migration by young women and girls, including those whose minor status (legally speaking) is indeed not always apparent in fact, and remains questionable in principle.[44] It is clearly not a happy situation for young girls to be followed, surveilled or picked up by police on suspicion that they are below 18 and are being trafficked. There is no actual evidence that the so-called trafficking hotspots have illegal, organised trafficking organisations at work. Rather, the hotspots seem to be pockets where labour migration streams of young women have become established, as was again evident in CWDS's Odisha study.

Already subjected to caste-based restrictions, easily stigmatised when they go out to work or socialise, and targets of public abuse for small transgressions in a deeply conservative social milieu, these young women will become additionally vulnerable to police aggression while migrating for work, if the trafficking law continues in the direction laid out in the 2018 bill. Friends and associates could all be picked up, their houses searched, etc, as could others who may have incidentally let these girls stay somewhere for a while. Migrant domestic workers (almost all from marginalised and oppressed castes/communities) who bring in others from their villages to the cities to work could also be easily labelled as traffickers and subjected to harsh imprisonment.[45]

Criminal law can hardly solve a socio–economic problem aggravated by shrinking employment opportunities in the rural areas, which propel more women to migrate for work. Live-in domestic work is not a particularly good employment option, but may be the only option. The way forward is, then, to improve the conditions of work in the sector. The ILO's convention on domestic workers (which India is yet to ratify) and the much talked about "national policy on domestic workers" may provide some direction. Notably, a comprehensive legislation on domestic work and ratification of the ILO convention are the ongoing demands of unions, which are ignored by the trafficking discourses, as well as the labour codes.

In the public debates on the 2018 trafficking bill, most of the discussion was focused on sex workers, who had emerged as an organised force on a national scale when protesting against a proposed amendment to the ITPA in 2006 that sought to criminalise the customers of sex workers (Kotiswaran 2017). It focused public discussion on voluntary sex workers as the targets of trafficking law. This mobilisation, in a sense, set the default lines and arguments for the debates, and were repeated in the opposition to the 2018 bill. In our view, this has led to elision over the new targets of the bill, which was the young migrant woman worker, who is most vulnerable to sexual stigma, and therefore easily becomes identified as being trafficked.[46]

It is clear from the discussion that the centrality of women in the anti-trafficking rhetoric is inevitably entangled with social and moral restrictions on women's mobility structured by caste and community restrictions, identities and hierarchies in India. They have shaped some of the particular forms of sexual controls over women in India, which includes an upper-caste ideological inheritance of social disapproval of women working outside the family fold, and prevalence of sexual suspicion and stigma being attached to those who do work outside. It has lent a sexual edge to perceptions of women's migration for work that has fed into discourses around trafficking, and vice versa. Such an edge does not seem to have ebbed with the inclusion of forced labour in definitions of human trafficking.

This being the case, it becomes all the more important to bring in an understanding of the changing political economy of female labour migration. From a labour perspective, the most important issue to be addressed is changing the unfree terms and conditions of work, including addressing "trafficked persons" and their needs and concerns as workers. An interface between labour laws, labour rights, migration and trafficking will indeed generate new issues and questions that will not be simple or easy. 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, the same contractors, and particularly the small village-level mediator would be considered a criminal. It may raise difficulties, and indeed an interface between labour laws and the criminal justice system will add new questions. They will have to be addressed in more concrete and nuanced terms than is presently the case.

NOTES

1 It, of course, took more than a decade for a general maternity benefit law for all women workers to come about.

2 The Industrial Disputes (ID) Act, 1947, replaced the earlier Trade Disputes Act, 1929 introduced by the British government in response to a wave of strikes. The ID Act established a machinery for conciliation, although it also included a provision for compulsory adjudication for disputes. The Trade Union Act, 1926 was retained, which provided immunity to the trade unions against certain forms of civil and criminal action. The administrative structures of labour law enforcement also reflect this connection between dispute resolution and social rights. Although the factory inspectors are tasked with enforcing the Factories Act, the labour officers are responsible for implementating all labour laws, including those dealing with industrial disputes. And both the officials function under the Labour Commissioner.

3 Mazumdar et al (2000) showed that in implementing the ERA, the labour department merely checked to see whether prescribed registers are maintained while ignoring the actual inequality in wages.

4 Following the enactment of the ISMWA in 1979, a specific explanation was inserted in the BLSAA, which clarifies that any system of forced or partly forced labour contract by which intra-state migrant workmen are required to render labour or service a "bonded labour system."

5 Socialism was incorporated in the Preamble to the Constitution in 1976, during the emergency.

6 It may be noted that the BSLAA has no provision for trade union representation in the vigilance committees set up under the act, although there is a provision for persons belonging to the ScheduledCastes or Scheduled Tribes.

7 In *People's Union for Democratic Rights and Others vs Union of India and Others* [1982 II LLJ 454 SC (1982) 3 SCC 235] the definition of forced labour under BSLA was expanded to include "Any factor which deprives a person of a choice of alternatives and compels him to adopt a particular course of action, may properly be regarded as 'force' and if labour and service is compelled as a result of such 'force' it could be 'forced labour.' The word 'force' must be construed to include not only physical or legal force but also force rising from compulsion of economic circumstances."

8 As per the 1950 UN Convention, key offenders were persons who, "Procures, entices or leads away, for purpose of prostitution" or "Exploits the prostitution of another person," even with consent of that person. Under Article 2, offenders were "any person who keeps, manages, or finances a brothel, or rents a building for the purpose of the prostitution of others." Offences under the SITA were framed according to the convention. The only changes that the ITPA introduced were enhancement of punishments, and substitution of persons for women and girls. The framework of brothels and prostitution of the SITA remained characteristic of the ITPA as well.

9 In comparison, the two heads of sexual exploitation for prostitution and other forms of sexual exploitation under purpose of trafficking together accounted for 33% of trafficking victims in 2016.

10 Sexual exploitation for prostitution and other forms of sexual exploitation under the purpose of trafficking together accounted for 37% of trafficking victims in 2018.

11 In 2016, males accounted for 45% of all trafficking victims, almost exactly the same as the proportion of forced labour victims.

12 Prior to 2016, cases were given separately for Section 366A IPC, for the ITPA, Sections 370 and 370A (together), as well as Sections 372 and 373 of the IPC. Section 366A refers to procurement of minor girl with intent of knowledge that she may be "forced or seduced to illicit intercourse." Section 370A refers to sexual exploitation of a minor trafficking victim regardless of sex. Section 372 refers to selling of minor for prostitution, and 373 to buying of minor for prostitution. Interestingly, "illicit intercourse" as explained in Section 372 "means sexual intercourse between persons not united by marriage or by any union or tie which, though not amounting to a marriage, is recognised by the personal law or custom of the community to which they belong or, where they belong to different communities, of both such communities, as constituting between them a quasi-marital relation." These details are important in shaping the frames of thought that go into anti-trafficking interventions.

13 The exponential jump in procurement of minors between 2012 and 2015, could be because of raising of the age of consent from 16 to 18 in 2013, which might also explain part of the decline in the ITPA since a number of cases earlier recorded under the ITPA, may have been pushed under 366A. The ITPA was also under pressure as an amendment had been proposed in 2006, which had come under a lot of flak, including from the Parliamentary Standing Committee to which it had been referred.

14 The study was based on a survey of 20 villages in Ganjam, Odisha, and repeat interviews of a cohort of migrant women workers over a period of two years, and discussions with offiicals. See CWDS (2019).

15 In this, the "good" intentions of the NGO lose relevance.

16 The National Policy on Domestic Workers was drafted in 2009 and subsequently revised multiple times, is still under consideration of the central government. See comments above.

17 Interestingly, while the interventions discussed so far involved the anti-trafficking unit of the police, they had not led to any case being registered. In interviews with a deputy superintendent of police and his staff in charge of the anti-trafficking unit, the researchers found that the only two registered cases with the anti-trafficking unit were regarding young women who had (according to their own investigation) eloped. Far from trafficking, the cases were of runaway marriages, and the police had no evidence of any exploitative conditions.

18 According to Census 2011, 84% of persons migrating for work were male. A problem with the migration data, in both the National Sample Survey Office's last migration survey in 2007–08 and the 2011 Census), is that they ask only one reason for migration, although many migrant women workers may have migrated for marriage or associational reasons. However, if all women who have migrated (for marriage) are workers, and are counted as migrant workers, it would be a gross overestimation of female mobility, at least for the rural areas. With the dominant practice of village exogamy, almost all married women in rural India are counted as migrants. They may be working on family farms, but could be completely immobilised in their in-laws' village. For the methodological inability of macro-data sets to provide accurate estimates and numbers of female labour migrants, see Mazumdar et al (2013).

19 Urban women migrants for work/business, whose last place of residence was rural, doubled from over 11 lakh in 2001 to over 23 lakh in 2011. Although the urban women migrants with last place of residence as urban, trebled from a little over 7 lakh to close to 22 lakh, for the same period, a significant proportion would be circulating migrants in construction, with an original start in rural areas. All census figures calculated from D–5, Census 2001 and 2011.

20 WPR is given for Usual Status (PS+SS). See Government India, NSO, Annual Periodic Labour Force Survey (PLFS), 2017–18, Statement 10. The restructuring of the NSSO's quinquennial employment–unemployment surveys into the

PLFS under the newly merged National Statistics Office, does create a few issues of data comparability; But whatever be the source, it is clear from the data that the WPR of women is falling at a precipitated rate.

21 Male WPR has also declined, but by just 2%, and in absolute numbers there is still an increase of male workers.

22 The sex ratio in urban areas has also shown a rapid increase from 920 females per 1,000 males in 2005 to 965 females per 1,000 males in 2018. In contrast, the sex ratio in rural India dropped slightly from 962 females per 1,000 males in 2005 to 952 females per 1,000 males in 2018 (NSO, PLFS 2017–18). Earlier, Census 2011 had revealed an increase in urban population that exceeded the increase in rural areas (between 2001 and 2011) for the first time ever in India's history. Census data shows that this was singularly due to the movement of women towards cities and towns.

23 Source: Statement 15: Summary of Findings, PLFS, 2017–18.

24 All estimates for numbers of women workers in various occupations were calculated from Table (25): Percentage distribution of workers in usual status (ps+ss) by occupation group/subdivision /division, in PLFS, 2017–18.

25 As per International Standard Classification of Occupations (ISCO) from which NCO is derived, directors and chief executives are supposed to head enterprises or organisations and, with the help of at least two other managers, determine and formulate policies and plan, direct and coordinate the general functioning of the enterprise or organisation.

26 See note 18 for detailed discussion.

27 Migrants are less prominent among teachers, as marked by the NSS migration data, 2007–08 as well. The NSSO has not undertaken any migration survey after 2007–08. Hence, no recent macro data is available.

28 The CoW repeals (i) The Payment of Wages Act, 1936, (ii) the Minimum Wages Act, 1948, (iii) the Payment of Bonus Act, 1965, and (iv) the Equal Remuneration Act, 1976.

29 Although the Madras High Court dismissed a petition by the Tamil Nadu Spinning Mills Association challenging the sumangali workers' entitlement to minimum wages on the grounds that they were apprentices, it remains an open question as to whether that will stand now. Importantly, the apprenticeship law is not being repealed by any of the codes.

30 The ILC, 1957 had set out the norms for calculation of a need-based minimum wage as (i) three consumption units for one wage earner; (ii) a minimum food requirement of 2,700 calories per adult person per day; (iii) clothing requirements at 72 yards per annum for an average working family of four; (iv) a house rent corresponding to the minimum area provided for under the Government's Industrial Housing Scheme; and (v) 20% of total minimum wage for fuel, lighting and other miscellaneous items. To this, the Supreme Court had added children's education, medical requirements, minimum recreation, including festivals/ceremonies, and contingencies such as old age and marriage as 25% of the total minimum wage.

31 A commitment to a below subsistence minimum for workers became evident when the Labour Minister announced a floor level minimum daily wage of ₹178 (₹4,628 monthly) just two weeks before introducing the CoW. This was after the government-appointed committee had suggested that the national minimum wage should be ₹375 per day (₹9,750 per month), which suggests that the advisory committees for minimum wages included in CoW, may also meet the same fate.

32 In the first bill, it was only facilitator, abolishing the inspector role completely. This would have been in violation of ILO Convention No 81, ratified by India in 1949.

33 It may be recalled that ahead of the 2019 elections, 10 central trade unions—INTUC, AITUC, CITU, AICCTU, HMS, UTUC, TUCC, SEWA, AICCTU, and LPF—had collectively demanded a national minimum wage. Only BMS did not support this demand.

34 The OSHWCC repeals the (i) Factories Act, 1948, (ii) Mines Act, 1952, (iii) Dock Workers (Safety, Health and Welfare) Act, 1986, (iv) Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, (v) Plantations Labour Act, 1951, (vi) Contract Labour (Regulation and Abolition) Act, 1970, (vii) Inter-state Migrant workmen (Regulation of Employment and Conditions of Service) Act, 1979, (viii) Working Journalist and other News Paper Employees (Conditions of Service and Miscellaneous Provision) Act, 1955, (ix) Working Journalist (Fixation of rates of wages) Act, 1958, (x) The Motor Transport Workers Act, 1961, (xi) Sales Promotion Employees (Conditions of Service) Act, 1976, (xii) Beedi and Cigar Workers (Conditions of Employment) Act, 1966, and (xiii) Cine Workers and Cinema Theatre Workers Act, 1981.

35 Although the safety provision for night work by women is mentioned in the Statement of Objects and Reasons for the OSHWCC, employer liability is not mentioned.

36 The COSS repeals the (i) Employees' Compensation Act, 1923, (ii) Employees' State Insurance Act, 1948, (iii) Employees' Provident Funds and Miscellaneous Provisions Act, 1952, (iv) Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959, (v) Maternity Benefit Act, 1961, (vi) Payment of Gratuity Act, 1972, (vii) Cine-Workers Welfare Fund Act, 1981, (viii) Building and Other Construction Workers' Welfare Cess Act, 1996, and (ix) Unorganised Workers Social Security Act, 2008.

37 Despite problems related to narrow coverage of workers, and paltry pension schemes, EPFO and ESIC have provided a model of social security that has worked well for the social security needs of the workers they cater to.

38 The COSS has added two new categories of workers (gig and platform workers) to the category of unorganised workers. Gig workers in India are known to be male dominated, with women still accounting for less than 5% of the workers. For platform workers, in India women's share is less than 25%. See Berg et al (2018).

39 The cess laws for beedi workers' welfare, for Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare, for cine workers welfare, for Mica Mines Labour Welfare Fund, for Limestone and Dolomite Mines Labour, were all repealed earlier to pave the way for GST.

40 Backed by the ILO, many state welfare boards for construction workers had begun to include brick kiln workers in their schemes.

41 The IRC repeals the (i) Trade Unions Act, 1926, (ii) Industrial Employment (Standing Orders) Act, 1946, and (iii) Industrial Disputes Act, 1947. Opposition to the IRC, 2019 has come even from the BMS, which has supported the other codes.

42 Government of India, Labour Bureau statistics for women's membership in trade unions in India, 2014 (latest).

43 It may be recalled that strikes were rendered illegal in export zones by giving them public utility service status under the ID Act.

44 The raising of the age of consent to 18 in 2013, was opposed by most women's organisations.

45 This is not to say that sexual exploitation is absent. But to make the point that its assumption without evidence is dangerous, and leads to harassment of migrant women workers.

46 It may be recalled that organisations and individuals, whose main focus has been on child labour, were the strongest votaries of the 2018 bill. They had earlier, in 2016, also supported the expansive definition of hazardous industries to include domestic work, for which employment of adolescents (ages 14–18) was banned.

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.

Berg, J, M Furrer, E Harmon, U Rani and M Six Silberman (2018): "Digital Labour Platforms and the Future of Work: Towards Decent Work in the Online World," ILO, Geneva, https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_645337.pdf.

Brand, Megan C (2010): "International Cooperation and the Anti-trafficking Regime," Working Paper 71, Refugee Studies Centre, Oxford Department of International Development, University of Oxford.

Chakravarty, Lalita (1978): "Emergence of an Industrial Labour Force in a Dual Economy: British India, 1880–1920," *IESHR*, Vol 15, No 3.

CWDS (2019): *Women Migrating in India: Evidence from Odisha*, Research Monograph (collaboration with LSHTM), https://www.cwds.ac.in/wp-content/uploads/2019/10/Women-Migrating-in-Inida.pdf.

Davies, Paul and Mark Freedland (1983): *Kahn-Freund's Labour and the Law*, 3rd edition, London: Stevens & Sons.

Kahn-Freund, O (1972): *Labour and the Law*, Hamlyn Trust.

Kotiswaran, Prabha (2017): "Law, Sex Work and Activism in India," King's College London Dickson Poon School of Law, Legal Studies Research Paper Series: Paper No 2017–30.

Mazumdar, I, Rewa Shankar Misra, Aanchal Kapur (2000): *Equal Remuneration in India*, Research Monograph (mimeo), Kriti.

Mazumdar, Indrani, Neetha N and Indu Agnihotri (2013): "Migration and Gender in India," *Economic & Political Weekly*, Vol 48, No 10.

NCEUS (2007): "Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector," National Commission for Enterprises in the Unorganised Sector, Government of India, Academic Foundation, New Delhi.

Neetha, N (2014): "Crisis in Female Employment: Analysis across Social Groups," *Economic & Political Weekly*, Vol 49, No 47, 22 November, pp 50–59.

Pandit, Ambika (2020): "Reporting of Crime a Must in New Anti-trafficking Bill," *Times of India*, 16 March.

Raveendran, G (2019): "Definitions and Statistics on Home-based Workers—Challenges, Gaps and the New ICLS Definition," presentation at ILO, New Delhi, 18–19 November.

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

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

Vaigai, R (2016): "Girl Workers in 'Sumangali Scheme' of Textile Industry, Tamil Nadu—Claiming Equality through Litigation," mimeo.

Government India NSO (2019): *Annual Report: PLFS, 2017–18*.