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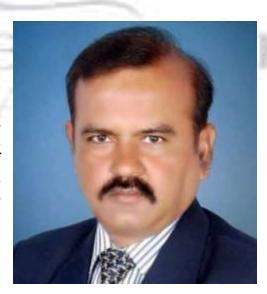


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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

LEGAL

CONSTRAINTS FACED BY WOMEN

MIGRANT WORKERS

AUTHORED BY - BELSIYA M

ABSTRACT:

In India, it is believed that more than 90% of the labour force is unorganised or informal and consists

mostly of migrant labourers. They are the main forces behind India's economic development. India

has 600 million internal migrants, of which half are women, according to latest estimates. The women

migrants have no choice but to seek employment in the shadow economy, which puts them at risk for

being victims of human trafficking, abuse, discrimination in the workplace, violence at work, limited

access to education for their children, deductions for menstrual leave, marriage, or pregnancy being

grounds for termination of employment while women already have pre-existing vulnerabilities.

Pandemic caused by COVID-19 subjected the defence less immigrant population to much suffering

and misery. The migrant population was forced to bear the brunt of the epidemic as it raged across

the nation, unleashing cascading misery on those who have always lived on the outside of society

with little public or government attention, minimal social protection, and limited access to assistance

programmes.

In order to foster an atmosphere that is enabling for potential female migrants, a solid legislative

framework must be established to handle the varied health and welfare requirements of interstate

female migrant workers: To assist and ease independent migration for women, migration information

and support centres might be built in high out-migration areas and high in-migration destination sites.

KEYWORDS: Labour, Migrant, Vulnerable, Violence, Women, Employment.

INTRODUCTION:

A migrant worker is someone who has relocated within the same nation or across nations in pursuit of employment and subsistence. The definition of a migrant worker according to the United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families is a person who will be engaged in, is engaged in, or has been engaged in a paid activity in a state of which they are not citizens. ¹For the bulk of migratory workers, economic and job possibilities, globalization, and urbanization are crucial factors. The phrase "migrants" typically conjures up images of men leaving their communities in search of employment in urban areas. Women have been migrating in recent years in search of jobs with greater salaries and Women have been emigrating in recent years in search of better jobs and salaries for themselves and their families.² Contrary to male migrants, female migrants may nevertheless encounter more prejudice, are more susceptible to abuse, and may face double discrimination as foreigners and as women in their host countries.

TYPES OF FEMALE MIGRANTS:

Autonomous Female Migration: Many women from the middle and upper middle classes move to cities to further their education and to find acceptable work.

Relay migration: Families with landholdings in the country send their daughters to work mostly as domestic workers, where they are secure under the care of a mistress, to increase the family's income. First, the second daughter steps in to take the position of the older one.

Family migration: In this case, the woman chooses to migrate with her husband in the aim of finding work in the new location rather than staying behind in the hamlet.

FEMALE MIGRANT WORKER IN INDIA:

Frequently, migrant women are crucial to maintaining and revitalizing their families and communities. The IOM reports that wherever they may be, women migrants send a larger percentage of their foreign earnings home than men do, and they frequently take on more care obligations for

¹ Usher E. Migration labour and Essentials of migration management: a guide for policy makers and practitioners, 67-80 (Geneva: United Nations Publications, 2004).

²ILO, estimation of women migrant workers, 90-122 (The ILO publications, volume ix)

family and domestic matters. One all-too-common factor underpinning the unique difficulties that female migrants encounter on the migration path is the problem of violence against women.

A fair and better-regulated labour market, a guarantee of decent employment, and the option to join a union are now requirements for the complete respect and acknowledgment of all migrant women's rights without any gender discrimination. We stress the significance of the battle against sexual assault, exploitation, and trafficking of women, who are typically migrants.

Female migrants' circumstances were not always favourable in the past. The migration of women was prohibited in several regions.³ Several facets of civil society, including women's organisations, labour organisations, professional groups, and others, reacted angrily to this. They said it violates the constitution and discriminates against women.

CAUSES OF WOMEN MIGRATION:

India has one of the lowest percentages of female labour force participation worldwide. Generally speaking, migrant workers have strong emotional ties to their birthplaces. But there are two reasons why people move away from their homes and places of birth: I push factors like natural disasters like flood, drought, cyclones, earthquakes, and tsunamis, as well as wars and regional conflicts, which also give people an extra push to migrate; and (ii) pull factors like the availability of steady employment and relatively higher wages. Better health and educational possibilities draw individuals from all around the world.

Economic factors: The need for improved employment, a scarcity of arable land, and population increase are the main driving forces. Prior to industrialization, villagers were forced to relocate as a result of cottage industries and agricultural automation.

Social factors: As a result of the rising number of women who forsake their homes, more of these women are migrating in search of work. Data from All India shows that more women migrate from rural-rural destinations than from rural-urban destinations. Until they find employment, the male

³ Women and migration :vulnerability in the face of abuse and discrimination, https://interactive.unwomen.org last visited on Feb 7, 2024.

migrants are dependent on female income. People move from one area to another due to societal traditions and tradition. A case in point is intercaste marriage. Either they are social outcasts or are despised by their neighbours and kin.

Population increases and an uneven rise in literacy rates are two key demographic drivers. Higher educated and more experienced workers relocate to new places in search of greater pay. Human migration is also influenced by mortality and birth rates. Population growth causes labour demand to rise, and extra labour from rural regions moves to urban areas.

As a result, India has fallen short in its efforts to offer social and economic protection to its migrant labourers. The fast growth of COVID-19 and its significant economic effect have further exposed India's outdated protection systems and disregard for migrant labourers in national policy.

MARRIAGE:

The main factor driving women to relocate is marriage. Nearly 154 million of the 221 million migrant women reported migrating after they got married, in contrast to the majority of males who relocate for employment. Female migration increased from 4.1 million to 8.5 million between 2001 and 2011. Women move for reasons that are social and economic.

- 1. In economically developed regions, there are better work chances and higher earnings; in economically underdeveloped regions, there are no employment prospects and as a result, life is difficult.
- 2. According to the National Commission on Rural Labour, the most significant factors are economic need, interregional discrepancy in economic growth as a result of uneven development, and inequality across socioeconomic groups.
- 3. Although migrant workers are hardly aware of these provisions, Article 19 of the Indian Constitution's guarantees of freedom of movement throughout all of India's territory and freedom to engage in any occupation of one's choice legally allow people to migrate in search of better employment opportunities.⁴ As a result, migration cannot be outlawed.
- 4. Despite hardship and exploitation, migrant workers' incomes may typically be higher than

⁴ L. Foley and N. Piper, COVID-19 and women migrant workers: Impacts and implications, 1509-175 (IOM, Geneva, 2022).

PROBLEMS FACED BY WOMEN MIGRANT WORKERS:

The women migrant workers endure terrible living circumstances and have difficulties including sexual exploitation, denial of their rights, and discrimination on the job.

Only 50% of the women were illiterate, and only 24% of the migratory women labourers had completed basic education.⁵ This demonstrates the extremely low level of education among women migrant labourers. The likelihood of employment satisfaction is relatively low. In a rapidly developing consumerist culture, the annual family income of the female migrant worker is insufficient. There were no high-quality child care facilities in the area, and the demand for work without holidays and unrest is contrary to labour rules and also causes stress-related psychological issues and health issues.⁶

The bosses did not make any accommodations at the job site. The lack of accommodations causes the women migrant workers, who travelled great distances, to be late for work. There are no safety precautions in place at work. The women workers were denied their rights because they were migrants.

Many of them lacked ration cards and were not citizens with the right to vote. It is clear that the majority of migrant women workers did not get any social security benefits when unwell, and many of them were refused maternity benefits while pregnant.⁷ Due to their ignorance of the government programmes offered through the unorganised sector, the majority of employees did not benefit from welfare measures. Although the NGO has spent the last 10 years advocating locally for women migrant workers.⁸ The majority (60%) of the female migrant workers have not benefited from any NGO assistance to improve their quality of life.

⁵ Sengupta, A, Migration, Poverty and Vulnerability in the Informal Labour Market in India, 4 TBDS, 99, 110-116 (2013). 6 Bhagat, R.B., R.S. Reshmi, Harihar Sahoo, Archana K Roy, and Dipti Govil, The COVID-19, Migration, and Livelihood in India, 99-106 (International Institute of Population studies, Mumbai).

⁷ International Labour Organization, COVID-19 and the World of Work, 145-180 (ILO Monitor 2nd Edition, 2020).

⁸ https://www.un.org last visited on Feb 10,2024.

- Discrimination in the labour market.
- Exploitive conditions at work.
- Violence in the workplace.
- Restrictions to collective association and organization.
- Limited access to health services, including for their children (boys/girls).
- Obstacles in accessing education for their children (boys/girls).⁹
- Restrictions to freedom of movement.
- Barriers for family reunification.
- Obstacles in accessing an identity for their children. ¹⁰
- Barriers in access to justice.
- Barriers in accessing migration documentation (residence permit and authorization to work). 11

IMPACT OF COVID -19 PANDEMIC ON WOMEN MIGRANT WORKERS:

Women who work as migrant labourers are more likely to lose their jobs, have their labour and human rights violated, and have the coronavirus. They most typically work in the unorganised sector of the economy, mostly in the care and domestic service industries, with precarious employment, no paid time off, and no remote work options. They also have a higher likelihood of working part-time, temporary jobs. Their employment is typically not covered by contributory social insurance programmes, therefore they have little to no access to health care and maternity benefits as well as few or no social safety nets to replace lost income. Women, particularly migratory women, are frequently engaged in low-paying positions that generally include duties that are socially and legally undervalued. The Crisis Management Act, 2005, which gives the Central Government the authority to impose limitations and adopt particular rules with the objective of controlling the disaster and so preventing its hazards, was used by the Prime Minister of India to proclaim a 21-day countrywide

⁹ Boniol et, women's roles as front-line health-care workers and as caregivers, they were more likely to be infected 78-90(Davies and Bennett, 2016).

¹⁰ Bansal, Rajesh, "India Has Social Schemes for Poor in Crises like COVID, 97-124 (International science studies, Mexico).

¹¹ www.migrantdataportal.org last visited on Feb 11,2024.

¹² L. Foley and N. Piper, COVID-19 and women migrant workers: Impacts and implications, 145-160 (IOM, Geneva).

GOVERNMENT LEGISLATION AND POLICIES

The colonial era and the well-known incidents that occurred during Gandhi's Satyagraha activities in the Champaran area, Kheda, and in the form of the Ahmedabad Mill Strike in the pre-independent period are both important points in the history of labour exploitation in India.¹⁴

Since years, the living conditions of migrant workers from rural households have been appalling. During the pandemic, the sudden suspension of all modes of transportation required by Clause 6 of the 2020 Guidelines of Essential Commodities Act, 1955, without the establishment of any kind of substitute arrangements for commuting, made the situation even worse for this group of the population. The rules made it clear that transportation may only be used for vital items and in cases of fire, law, order, and emergency services. Due to the pandemic's unpredictability, the working poor in India have also experienced a lack of financial stability. In India, 89% of all employees fall into this category. In India, 89% of all employees fall into

Constitutional Rules In addition to daily loss and suffering during the COVID-19 crisis, those affected by the same issue were treated unfairly and unequally. When one side had the means to stock up on basics, food supplies, and toiletries lasting for over a month, and on the other hand, some people on the road could not even get one meal a day, the gap between the fortunate and unprivileged segment started to become more apparent. ¹⁷Article 14 of the Indian Constitution declares a person's right to equality. The migrant issue further highlights the flagrant disregard for the Article 14 norm of "equal compensation for equal effort." ¹⁸ State of Orissa v. Balaram Sahu ¹⁹expanded and defended the same idea. In order to promote socioeconomic fairness, the Court made it plain in its ruling that the State

¹³ BIPIN CHANDRA &ORS, India's Struggle for Independence 1857-1947, 335 (8th. Ed. Penguin Book House, New Delhi)

¹⁴ Sengupta, A, Migration, Poverty and Vulnerability in the Informal Labour Market in India,110- 116 (TBMS publications, Mumbai).

¹⁵ The Disaster Management Act, No.53 of 2005, INDIA CODE (2008), Vol. 12

¹⁶ The Essential Commodities Act, No. 10 of 1955, INDIA CODE (1988), Vol. 27

¹⁷ Sunanda Sen, Rethinking Migration and the Informal Indian Economy in the Time of a Pandemic, THE WIRE, (1 october 22, 8:14 P.M), https://thewire.in/economy/rethinking-migration-and-the-informal-indianeconomy-in-the-time-of-a-pandemic

¹⁸ INDIA CONST. art 14

¹⁹ State of Orissa v. Balaram Sahu, AIR 2008 SC 5165

must make sure that minimum wages are set and paid to employees.

The current situation, in which migrant labourers are frequently denied access to basic essentials like food, clothes, and shelter as well as safe and sanitary living circumstances, can be characterised as a blatant violation of Article 21 of the Indian Constitution. With the historic Indian ruling in Kharak Singh v. State of Uttar Pradesh²⁰, the concept of "personal liberty" was broadened to encompass more than only animal existence.

The Indian Preamble's demands for a welfare state, social, economic, and political justice, as well as equality of opportunity and position, are further aided by the Directive Principles of State Policy included in Part IV (Articles 38-51) of the Indian Constitution.

THE INTERNATIONAL COMMUNITY HAS DEVELOPED A SERIES OF INSTRUMENTS FOR PROTECTING WOMEN MIGRANT WORKERS' RIGHTS:

The most important tool for the protection of this particular demographic is the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CTM, 1990).

The CTM provides access to human rights regardless of a group's status as migrants by granting human rights to the migrant population in accordance with the idea of equality among all people. Since 1999, Mexico has been a State Party to this Convention.

• The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW, 1979) works to end gender-based discrimination and exclusion, which, when combined with other factors like ethnicity, financial standing, nationality, age, and occupation, among others, restrict the ability of women migrant workers to exercise their rights. In 1981, Mexico approved the CEDAW.

The CEDAW General Recommendation No. 26 (2008) discusses in depth the factors that make many migrant women particularly vulnerable to discrimination based on gender and

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²⁰ Kharak Singh v. State of Uttar Pradesh (1963) AIR 1295, 1964 SCR (1) 332 (India)

sex, describing this vulnerability as both a cause and an effect of the violation of their human rights. This suggestion stresses that migration is not gender-blind because it has diverse effects on men and women. It contends that a gender perspective must be taken into account when analysing female migration and developing public policies to stop violence and discrimination against women, advance their rights, and ensure their social and economic involvement.

• The rights protection for women migrant workers is complemented by a number of International Labour Organization (ILO) Conventions. ²¹In particular, the Domestic Workers Convention (No. 189) (2011), a crucial tool that, after being approved by States, helps to secure the rights of both domestic worker nationals and migratory women.

CONCLUSION:

Women Migrant workers are faced many constraints in their works such as low paid, no proper health care etc.., and in covid times their life is in question mark? The present study is one of the documenting the experience of migrant women in India. The study light upon the dismal state of migrant women workers and their families, due to the unplanned lockdown and subsequent period of socio-economic and health crisis.

The major issues arising from the study about women's experience include the loss of livelihood and debt. The participants had to compromise many essential requirements in their daily living.

The burden of responsibility and captivity made the life of women stressful. Women experienced a significant disruption of access to services. The government measures devised for the women migrant workers in society haven't reached them. The migrant workers are contributed for the sustained urban economy. We should made efforts to restore economic activities of migrant women workers feel confident, secure, and safe.

²¹ Bhagat, R.B., R.S. Reshmi, Harihar Sahoo, Archana K Roy, and Dip tiGovil. 2020. The COVID-19, Migration, and Livelihood in India. Mumbai: International Institute of Population studies.

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migration-and-the-informal-indianeconomy-in-the-time-of-a-pandemic

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¹ INDIA CONST. art 14

¹ State of Orissa v. Balaram Sahu, AIR 2008 SC 5165

¹ Kharak Singh v. State of Uttar Pradesh (1963) AIR 1295, 1964 SCR (1) 332 (India)

¹ Bhagat, R.B., R.S. Reshmi, Harihar Sahoo, Archana K Roy, and Dip tiGovil. 2020. The COVID-