



## BACKGROUND NOTE FOR 2<sup>nd</sup> REGIONAL CONSULTATION ON REVIEWING LAW RELATED TO INTER-STATE WOMEN MIGRANT WORKERS<sup>1</sup>

### INTRODUCTION

The CoViD-19 epidemic has affected many countries and the World Health Organization has declared it 'Pandemic'. Government of India (GOI) has been taking several proactive preventive and mitigating measures to contain the spread of this virus early on. The announcement of 21-day national lockdown and its subsequent extension till 3<sup>rd</sup> May by the Hon'ble Prime Minister came in the wake of this outbreak to enable 'social distancing', an effective non-pharmaceutical prevention and control intervention. The far-sighted and unprecedented step of lockdown however saw a large scale movement of migrant workers across the country due to lack of livelihood, food, shelter and transport. This has brought forth problems faced by thousands of inter-state migrant workers, particularly women, and NCW has initiated consultations at regional and national level to examine the legal framework for migrant workers and make suggestions so as to provide them prescribed minimum social security and welfare.

India is established as a welfare state by the Constitution and is responsible for social security of its citizens through Directive Principle of State Policy. Article 39, 42 and 47 of the Constitution are dedicated to ensure social security including appropriate healthcare, food, shelter and safety to its citizens especially women workers. **Impact of migration on women in India has been largely un-assessed. They are, many a time, the primary wage earners of their families and make essential contributions to their family and society.** National Commission for Women with its mandate to review legal and constitutional safeguards available to women; identify inadequacies and suggest remedial measures thereto, feels that it imperative to take up the cause of inter-state migrant women workers and ensure that their rights are secured.

### LEGAL FRAMEWORK

Migration between states is an outcome of social, economic and cultural diversity in India. The need for a specific legislation for addressing the issues of migrant labourers culminated in the enactment of Interstate Migrant Workmen Act, 1979 (hereinafter referred to as The ISMW Act). Other beneficial legislations are also applicable to migrant workers as a whole depending on the intent and express provisions of those Acts.

#### The ISMW Act and allied rules

The Inter-State Migrant Workmen Act, 1979 defines an inter-state migrant workman as "any person who is recruited by or through a contractor in any state under an agreement or other

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<sup>1</sup> Organized by National Commission for Women in association with NLU, Odisha.



arrangement for employment in an establishment in another state, whether with or without the knowledge of the principal employer of such establishment.”

### **Main Features of ISMW Act and Related implementation issues:**

1. **To whom the Act applies:** The ISMW Act applies to all establishments and contractors employing five or more inter-state migrant workers. These establishments have to be registered under the Act while the contractors employing (i.e. supplying) inter-state migrant labour have to obtain a recruitment license from the home State of the labourer and an employment licence from the State where they are to be employed.
  - 1.1. **The provisions relating to licensing of contractors and registration of establishments have however hardly been enforced** given the multiple licensing culture as per the existing labour laws. Act though provides for penalty in cases of contravention<sup>2</sup> its implementation has remained patchy.
  - 1.2. **Definition of migrant worker can be improved:** In the recent regional consultation on 25<sup>th</sup> April 2020, it was brought out that many migrants are not covered under the Act since they are not recruited from their home states by the contractors; instead they get jobs using their social networks. Hence the definitions can be fine-tuned.
2. **Responsibilities of Contractor:** The ISMW Act outlines the responsibilities of the contractor<sup>3</sup> towards the inter-state migrant labour which includes issuing them a passbook that would serve as a combined identity card and proof of employment, giving them a stipulated displacement allowance to meet travel expenses to the place of work, paying them wages in a timely manner and equal to or more than the minimum wage, ensuring equal pay for equal work, providing them with suitable conditions of work & protective clothing and prescribed medical facilities free of charge, and providing and maintaining suitable residential accommodation for them during their period of employment. The contractors are required to furnish information to the authorities of both the states about the termination of employment with a declaration that wages and other dues of the workman and the fare for return journey back to his/her state payable have been paid.
  - 2.1. Comprehensive data on whether these **prescribed minimum requirements are provided to migrant workers is unavailable.**
3. **Facilities for Women not mentioned: The ISMW Act does not mention address special vulnerabilities of women migrant workers and their access to social protection.**
  - 3.1. To some extent detailed provisions of residential accommodation, canteen, drinking water, latrines and urinals, washing facilities, rest-rooms and creche are outlined in the Inter- State Migrant Workers Central Rules, 1980 which are beneficial to women workers. In every establishment where 20 or more workmen are ordinarily employed as migrant workmen and in which employment of migrant workmen is likely to continue for three months or more, the contractor is bound to provide and maintain two rooms of reasonable dimensions for the use of their children under the age of six years.

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<sup>2</sup> Section 26 of the ISMW Act

<sup>3</sup> Section 12 of the ISMW Act



4. **Inspection by Authorities from home state:** The ISMW Act, in limited words, provides for inter-state coordination for monitoring compliance of said provisions by allowing inspecting authorities from home state of migrant workers to get due support in the destination state<sup>4</sup>.
  - 4.1. **This provision though very critical has again seen lax implementation from States. This further has implications as cognizance of offences under the Act can only be taken on a complaint made by or previous sanction of an inspector or authorized person.**
5. **Punishment/Penalty for non-compliance of the provisions has not been stringent** – There is a need to revisit the provisions related to non-compliance in the ISMW Act and find solutions to push a culture of compliance.

### Other beneficial legislations applicable

**The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act**, was passed in 1996 for the welfare of the construction workers. This Act provides for health, welfare and safety of the construction workers. Under this, facilities for health care, education, crèche, toilets and restrooms are prescribed which the **employers usually do not provide**. Also, the workers have to register in order to avail the benefits of mandated welfare schemes like scholarships for children, retirement and family pension, health benefits, loan and advance for tools, housing loans, maternity benefit, Rashtriya Swasthya Bima Yojana (RSBY), death and injury compensation. But **most of the workers especially women remain outside the purview of these benefits due to break in work contract and poor knowledge of entitlements as well as inability to seek them**.

**The Unorganized Workers Social Security Act, 2008** was enacted to provide social security and welfare of unorganized sector workers. This Act brings the “migrant workers” under the definition of wage worker. The scope of the Act extends to all workers in the unorganized sector, whether, employed directly or through an agency or contractor, whether a casual or temporary worker, a migrant worker and workers employed by households including domestic workers – self employed or employed for wages.

As per the said Act, Central Government is responsible to formulate and notify suitable welfare schemes for unorganized sector on matters relating to life and disability cover, health and maternity benefits, old age protection etc. State Government may formulate and notify suitable welfare schemes for unorganized workers relating to Provident Fund, Employment injury benefit, Housing, Educational scheme for children, skill upgradation of workers, funeral assistance and old age homes etc.

It also provides for constitution National Social Security Board and State Social Security Board respectively for the administration and coordination of the Act at Central and State levels. State Governments may setup workers facilitation centers to facilitate the enrolment of the registered unorganized workers in social security schemes, assist unorganized worker to obtain registration

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<sup>4</sup> Section 20 of the ISMW Act



etc. Every State/Union Territory in India is also obliged to permit officers of the originating state of migrant labour for holding proper inquiries within the limits of the recipient state for enforcement of the Act similar to what is provided in the ISMW Act. **However, any formulation and access to social security schemes or initiation of proper enquiries into contravention of legal provisions need reliable data.**

Apart from this, provisions of various labour laws like **Employees Compensation Act, Payment of Wages Act, Industrial Disputes Act, Employees State Insurance Act, the Equal Remuneration Act, Trade Unions Act, 1926 and Maternity Benefit Act** are applicable to migrant workers subject to qualifying provisions. Problem is to access the provisions given in a host state usually with a different language, different set of court procedures, lack of portability of services and lack of adequate awareness. These problems only magnify for women migrant worker who is anyway looked as dependent migrant and not as a separate economic entity; who lacks basic education, financial & legal literacy and predominantly fall in unorganized/informal sector.

## Recent Developments

The Occupational Safety, Health and Working Conditions Code, 2019 aimed to subsume 13 of the existing labour laws into a single legislation, including the Interstate Migrant Workmen Act, 1979 was referred to the Parliamentary Standing Committee on Labour and Employment. The Report has been laid in both Houses of Parliament on 11.02.2020. The Committee in its Report is of the firm view that a separate and exclusive chapter on Migrant Workers be introduced in the Code. The Bill provides for **Chapter XI Part I ‘Contract Labour and Inter-State Migrant Worker’** that has dedicated provisions **for regulation of working conditions and services of migrant workers** apart from other social security provisions provided in the Code. **The other key provisions of the Code that may be relevant to the discussion:**

1. Presently, different applicability thresholds exists for welfare provisions like crèche, canteen, first aid, welfare officer etc in different Acts. The proposed Code has envisaged uniform threshold as far as practicably feasible.
2. The provision of one license, one registration and one return.
3. The multiple committees to be substituted by one National Occupational Safety and Health Advisory Board.
4. Employer to provide free of cost annual health checks-up for employees above prescribed age for prescribed tests and for prescribed establishments.
5. Women permitted to work beyond 7 PM and before 6 AM subject to the safety, holidays, working hours or any other condition as prescribed by appropriate government in respect of prescribed establishments.

It may be of relevance to discuss whether subsuming of the ISMW Act in the new Code will improve the situation of compliance and implementation or retaining ISMW Act as a special legislation has more merits.



## Women Migrant Workers – A closer look on special vulnerabilities

Female migration for work has not only grown far more rapidly than the female workforce, but increased at nearly twice the rate of male migration<sup>5</sup>. Thus, women migrant workers are now a formidable category in the labour/economic force and their plight cannot be ignored. In the sphere of Industrial Law, the Women have been assigned a special position in view of their unique characteristics. The Constitution of India contains number of provisions to protect the interest of woman. The mandate given in the constitution to the state has resulted in number of protective, beneficial and health provisions made in various enactments for the benefit of women. Article 42 of the Constitution of India directs the state to make provision for securing just and humane conditions of work and for maternity relief.

**Maternity Benefit Act:** The ISMW Act focuses on bare minimum social protection to women. Maternity Benefit Act, 1961, for instance, is the most important enactment dealing with the women working in factories, mines, plantations and other industrial establishments. ‘Woman’ under this means a woman employed whether directly or through any agency, for wages in any establishment. However, a woman worker is entitled to claim maternity benefit only when she has actually worked 80 days in the twelve months immediately preceding the date of her expected delivery in an establishment of the employer from whom she claims maternity benefit. Thus, in practice it is rare for a migrant women worker to get a maternity leave provided in the Act.

**The Equal Remuneration Act:** The Act provides for equal wages for equal work and prohibits discrimination on the basis of sex. This however is not truly realized in context of women migrant workers who work in informal sector such as construction wherein as a general practice they are recruited by contractors as helpers to the labour (usually their spouses) and paid less even though they work same hours as men. Even their remuneration is paid to their spouses as the ISMW Act mandates cash payments.

**Prevention of Sexual Harassment at the Workplace Act** is another critical piece of legislation which may be applicable to migrant worker women as they are both prone and subject to sexual harassment at workplaces given the isolated and informal nature of work. So far, however, they have not been able to have an effective access to the provisions of this law for redressal of their grievance.

There is no national policy or scheme dealing specifically with migrant women workers. One of the constraints of framing an effective policy for migrants is due to the lack of reliable data on migration. Census records and NSSO leave a significant impact on policy making but the lives of women migrants are generally missed out. Acts like ISMW Act, Unorganized Social Security Act, Building and Other Construction Workers Act touch upon issues like crèche facilities, equal pay for equal wage, separate toilet facilities but do not address it in a wholesome gender sensitive manner. Labour being a subject matter of the concurrent list, both Central and State

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<sup>5</sup> Economic survey 2015-16



Governments are competent to legislate and therefore State to State practices may also be seen to be different. Weak implementation of these laws, lack of awareness about their rights among women and the sheer economic duress they suffer as a section makes them further vulnerable.

Female rural to urban migrants continue to be vulnerable to social discrimination in wages and labour market segmentation which reserve the most repetitive, unskilled, monotonous jobs for women. They tend to work in unorganized informal sector and experience long working hours for a very low wage, un-healthy or perilous working conditions, and psychological, physical and sexual aggression. So measures designed to ‘protect’ migrants must be supplemented by steps that empower them. In this regard, the 1<sup>st</sup> regional consultation brought home the point that States should work on SoPs to make women aware of their rights if and when they migrate and start working in another state. There should be dedicated mechanisms to assist them in getting any benefits, to provide them legal aid and also to redress their grievances. The destination states also need to make due arrangements for inter-state compatibility and functioning of these mechanisms.

### **Need for Consultation and Outcomes Expected**

- Assessing ways in which the present legal framework relating to Inter State Migrant Workers can be made more gender aware.
- Identifying Inadequacies in the present legal framework and suggesting remedial measures so as to improve the condition of inter-state migrant workers as a whole and women migrant workers in particular.
- Gathering information related to the present status of implementation of provisions relating to wage payments, displacement allowance, journey allowance, crèche, medical facilities, health services and anti-sexual harassment and measures to improve effectiveness for women workers.
- Reviewing the ISMW Act along with other beneficial legislations to understand inconsistencies and whether the new 2019 Code is an improvement over it as regards welfare of women.
- Understanding the nature of migrant women workers in Indian labour workforce so that different issues related to different groups are addressed.
- Devising ways to mainstream migrant women workers in developmental plans and programmes.

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