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Counted but Not Seen: Women Migrant Workers and the Shift from the Inter-State Migrant Workmen Act, 1979 to the OSH Code, 2020

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Abstract. The Occupational Safety, Health and Working Conditions Code, 2020, enacted but not yet in force, will replace the Inter-State Migrant Workmen Act, 1979. This paper examines how the change is likely to affect women migrant workers, who are concentrated in construction, domestic work, brick kilns and agriculture and are often under-recorded in official data. Using doctrinal analysis of statutes, the Supreme Court's migrant-worker proceedings during COVID-19 and secondary literature on gender and migration, it finds that the Code's wider definition of migrant worker, annual journey fare and portability of benefits are positive, but that its gender-neutral drafting does not address payment through male heads, lack of individual documentation, absence of worksite childcare, unsafe accommodation and limited access to redress. The paper recommends individual registration, direct wage payment, mandatory childcare and safe accommodation, and gender-disaggregated data.

Keywords: Migrant workers; women; OSH Code; construction workers; inter-state migration; India

1. Introduction

The sight of millions of migrant workers walking home after the nationwide lockdown of March 2020 exposed how little legal protection India's migrant workforce enjoys. Women were among them, but they were rarely counted. Women migrate for marriage, for family and increasingly for work, and official data have long under-recorded the last category because marriage is the most commonly reported reason for female migration (Mazumdar et al., 2013). Women migrant workers are found in construction, domestic work, garment and electronics manufacturing, brick kilns, agriculture and care, usually in the informal economy and often in circular patterns of seasonal movement (Srivastava & Sutradhar, 2016).

The principal statute for migrant workers, the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 (the ISMW Act), is to be repealed and replaced by provisions of the Occupational Safety, Health and Working Conditions Code, 2020 (the OSH Code), which has been enacted but not brought into force. This paper examines how that change is likely to affect women migrant workers, and asks whether a framework designed around a male, contractor-recruited, single migrant worker can protect women migrants.

2. Conceptual Framework

Gender and migration scholarship stresses that migration is shaped by social relations as well as by wages. Women's migration decisions are influenced by household structure, safety, caregiving and norms about mobility; and their position at destination is shaped by gendered labour markets and by the fact that many migrate as "associational" members of male-headed households (Mazumdar et al., 2013). At work, women are frequently paid through male family heads or labour contractors, which obscures their individual identity as workers and complicates enforcement of wage and welfare rights. Intersectional analysis adds that caste, religion and region compound vulnerability (Crenshaw, 1989). The central point is that rights framed in gender-neutral terms may not reach women whose employment is mediated through households and intermediaries.

3. Methodology

The study is doctrinal and uses secondary data. It compares the ISMW Act with the OSH Code, considers the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 and the Supreme Court's suo motu proceedings on migrant workers during COVID-19, and

draws on research on gender and migration. As the OSH Code is not in force and rules are in draft, the analysis is prospective.

4. Women Migrant Workers: A Profile

Construction is the sector in which women's labour migration is most visible. Women are engaged as head-loaders, helpers and unskilled labourers, are generally paid less than men for similar tasks, and work in conditions marked by long hours, lack of toilets and crèches and exposure to harassment (Srivastava & Sutradhar, 2016). Migrant women in domestic work live in or near employers' homes and have very limited privacy and recourse. Women in brick kilns and agriculture often work in couples or family units, where payment is made to the male head and women's contributions are unrecorded. Many migrant women also carry the double burden of unpaid care for children living with them at worksites, where no childcare exists.

The pandemic revealed these vulnerabilities. Migrant women faced loss of income, lack of food and shelter, difficulty returning home with children and, for pregnant women, reduced access to antenatal and delivery care. The Supreme Court, in its suo motu proceedings in *In re: Problems and Miseries of Migrant Labourers* (2020–2021), directed governments to provide transport, food and shelter and, in 2021, directed the Union to complete a registration process of unorganised and migrant workers and to ensure portability of ration entitlements. These orders were responses to an emergency, not a systematic gender-responsive framework.

5. The Legal Framework

5.1 The ISMW Act, 1979

The ISMW Act applied to establishments and contractors employing five or more inter-state migrant workmen recruited through a contractor. It required registration of establishments and licensing of contractors, equal wages with local workers, a displacement allowance, a journey allowance, suitable accommodation and medical facilities. Evaluations over decades have found poor enforcement, low registration and limited awareness. Because the Act covered only workers recruited through contractors, those hired directly by employers or who moved independently were largely outside its reach. The Act also contained no gender-specific provisions.

5.2 The OSH Code, 2020

The OSH Code widens the definition of inter-state migrant worker to include workers who come from another state on their own and are employed directly by an establishment, within a wage ceiling prescribed by the Code. It requires employers to pay an annual fare for the worker to travel to the home state, provides for the registration of migrant workers on a portal, and aims at portability of welfare benefits, including the public distribution system, between states. It also requires equal wages and benefits for migrant and local workers and the creation of a national database of migrant workers. Table 1 sets out the main differences.

Table 1. ISMW Act, 1979 and OSH Code, 2020 compared

Feature	ISMW Act, 1979	OSH Code, 2020
Who is covered	Workers recruited through a contractor	Also workers who migrate independently and are employed directly, up to a wage ceiling
Journey allowance	Paid at the time of recruitment or on termination	Annual to-and-fro fare to the home state

Registration and data	Establishment and contractor registration	Registration of workers on a portal; national database
Portability of benefits	Not addressed	Intended portability of benefits such as ration entitlements
Gender provisions	None specific	General provisions for women's employment and safeguards; no migrant-women-specific provisions

6. Critical Analysis

6.1 Widening the definition: a gain for women

The extension of coverage to workers who migrate independently is significant for women, many of whom migrate with family networks and not through licensed contractors. The shift from contractor-based recruitment to a worker-based definition recognises the reality that much migration is self-organised. The use of a worker-based portal and database could also make women visible as workers in their own right, provided registration is individual and not household-based.

6.2 Gaps for women

The Code's provisions are gender-neutral, and none responds to the specific problems of migrant women. First, payments through male heads and gang leaders mean that women often lack individual wage records and bank accounts, making it hard to claim wages, bonus or compensation. Second, the thresholds in the Code (for the size of an establishment and the number of migrant workers) exclude small workplaces, brick kilns and households, where many women are employed. Third, the Code does not address childcare at worksites; the Code on Social Security, 2020 requires crèches in establishments with fifty or more employees, but a mobile workforce on a construction site is unlikely to benefit. The Building and Other Construction Workers Act, 1996 provides for crèches and welfare boards, but construction workers' boards have been criticised for low registration and unspent cess funds.

6.3 Portability and the problem of documentation

Portability of entitlements, such as ration through the One Nation One Ration Card initiative, is a significant improvement, but it depends on identity documents, digital access and bank accounts. Women are less likely than men to hold such documents in their own names. A rights framework that depends on digital registration can reproduce the exclusion of women.

6.4 Safety and harassment

Women migrants often live in temporary accommodation with poor lighting and shared facilities. The Sexual Harassment of Women at Workplace Act, 2013 applies to unorganised workers through Local Committees, but few migrant women know of them, and the district-level machinery is hard to reach from a worksite. The OSH Code's accommodation and welfare provisions could include safety standards for women, but this will depend on rules.

7. Recommendations

- Provide for individual registration of women migrant workers, with payment into the worker's own bank account, and prohibit payment of wages for women's work to male heads or contractors.
- Make crèche, safe accommodation, separate sanitation and lighting mandatory conditions for establishments employing migrant workers, including construction sites.

- Use the national database to publish gender-disaggregated data on migrant workers, and link it with the e-Shram registry and construction welfare boards.
- Establish worksite and destination-state help desks, linked with Local Committees under the POSH Act, for complaints of harassment and non-payment.
- Fund the participation of women migrant workers' organisations in the design and monitoring of rules.

8. Conclusion

The OSH Code's approach to migrant workers is broader and more realistic than that of the ISMW Act, and portability of benefits is a significant advance. But the framework does not recognise that women migrate differently, work differently and are paid differently. Without individual registration, worksite childcare, safe accommodation and accessible redress, women migrant workers will remain the least visible among an already invisible population. A gender-responsive approach would treat the migrant woman as a worker in her own right.

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