

---

# CRITICALLY ANALYSING THE EXISTING LEGAL FRAMEWORK FOR PROVIDING ACCESS TO HEALTH CARE FACILITIES TO MIGRANT WOMEN IN INDIA.

---

Tellmy Jolly, National University of Advanced Legal Studies (NUALS), Kochi

## ABSTRACT

Migration affects men and women differently. There is an existing hostility and disdain against migrant workers across the country. The impact of such prejudices especially in the midst of a global pandemic and its effects on migrant women in accessing health care services is the subject of my study. Women often migrate along with their husbands for search of better employment opportunities, they also tend to migrate due to extreme poverty and failed marriages and are employed as construction workers, domestic house helps etc. The paper is divided into three main parts. First part aims to analyze the overall availability and accessibility of healthcare services to migrant women. This includes access to health care facilities in case of illnesses, accidents or emergencies, pregnancy care, maternity leave, reproductive health, psychological and mental support to migrant women. Apart from these, poor sanitation hygiene of migrant women is a serious health care concern which needs to be addressed. To understand it deeply, the existing regulatory framework is studied. Migrant women come under the unorganized sector of employees due to which they do not often get the benefits of national labor laws that are available to women working in the other sectors. The second part deals with the impact of Covid-19 on migrant women. For deeper understanding, access to testing for Covid-19, vaccination, facilities for social distancing, transportation and quarantine facilities of migrant women can be examined. In the last part of the paper, the shortfalls in the legislative policy for the protection of migrant women under the existing regulatory framework in India is critically examined from a gender perspective and recommendations are provided.

**Keywords:** Migration, Healthcare, Gender, Labor laws, Covid-19

## INTRODUCTION

In contemporary times, the idea of feminization of migration has been gaining prominence. Earlier, women were seen as immobile workers who were taking care of household responsibilities and did not migrate from one place to another. Migration was often associated with men. In a patriarchal society, men are seen as the care provider and giver. Later, men were seen as the agent of migration and after marriage women accompanied men who migrated for work<sup>1</sup>. With the advent of times, as financial and economic responsibilities started becoming shared in the Indian households, we saw more and more women migrating for labor. According to the International Migration Report, 2019 of the United Nations Department of Economic and Social Affairs, 47.9 per cent of International migrants are women<sup>2</sup>. In the year 2000, about 49 per cent of the International migrants were women. It is due to this increase in the number of women migrants, the term feminization of migration has been used.

Migration is the displacement or movement of persons from one place to another in search of better economic opportunities. Most migrants migrate from one place to another to eliminate poverty and in pursuit of better jobs. Migrants belong to the unorganized labour sector, as a result of which, they are exposed to long hours of work, unpaid work, inhumane working conditions, lack of legal aid and other benefits. In India, women mostly migrate along with their husbands after marriage or in some cases there are single female migrations also. As per 2011 census, as much as 80 per cent of women migrate after marriage. In Single female migration, the women will be migrating from one place to another out of extreme poverty where she is sole breadwinner of the family. Certain females also migrated after being trafficked, abducted or tricked into marriages. Such women migrate in search of better living opportunities and they are stigmatized in their working environment for migrating alone<sup>3</sup>. Women migrants suffer more as they have to undergo the problems of working in an unorganized labour sector with less or no access to resources such as sanitation facilities, maternity leaves, health care resources which are basic or primary resources that are provided to women employed in other sectors. Women migrants in India are mostly employed as domestic house helps and

---

<sup>1</sup> Roberto Marinucci, *Feminization of Migration*, 15(29) REMHU- Revista Interdisciplinar da Mobilidade Humana (2007)

<sup>2</sup> International Migration Report, United Nations Department of Economic and Social Affairs, can be accessed at [https://www.un.org/en/development/desa/population/migration/publications/migrationreport/docs/International\\_Migration2019\\_Report.pdf](https://www.un.org/en/development/desa/population/migration/publications/migrationreport/docs/International_Migration2019_Report.pdf)

<sup>3</sup> Samita Sen, *Impossible Mobility- Marriage, Migration and Trafficking in Bengal*, Vol No. 44 & 45, Economic and Political Weekly, (2016)

construction workers.

## **HEALTH CARE SERVICES AVAILABLE TO MIGRANT WOMEN UNDER THE EXISTING LEGISLATIONS**

The Constitution of India guarantees right to health and equality to access health care services to all persons, including migrant women. The government has the constitutional duty to provide just and humane conditions of work and maternity benefits. The government should also include migrant women in various health care policies that are implemented by the state.

Since migrant labourers belong to the unorganized sector, they do not have access to many of the existing labour legislations in India. Even if some legislations recognise the rights employees of the unorganised sector, most of the migrant women are unaware of the existence of such legislations. Most migrant workers are excluded from the below mentioned legislation because migrant workers are not registered under these laws.

The Unorganized Workers' Social Security Act, 2008 is enacted for the social security and welfare of the workers who are working in various unorganised sectors and can be self-employed, wage worker among others. Section 3 (b) of the Act states that the Central government can frame welfare schemes for the unorganised workers on matters relating to their health and maternity benefits. As of now, there are no social security schemes framed by the government for giving maternity or health benefits to migrant women in India. The objective of the Act is to provide relief to persons working in the unorganised sectors. Even then, Section 10 of the Act mandates for registration of unorganised worker for getting the benefit of welfare schemes. Section 10 states that every the unorganised worker will have to fulfil certain conditions to complete the registration such as submit self-declaration stating that he or she is an unorganized worker. As per Section 10 (2), the unorganised worker will have to submit an application in requisite format along with other documents to the District administration for completing the registration. Due to such procedural requirements for registration, most of the unorganised workers does not get any benefits provided under the Act. Most of the migrant woman workers do not even know the existence of any benefits and the Act. Furthermore, as per Section 10 (4) of the Act, for certain welfare schemes, the unorganised worker will have to make a contribution for becoming eligible to receive social security benefits. This means that the unorganised worker will only receive the social security benefit only making the contribution.

Therefore, as per The Unorganized Workers' Social Security Act, 2008, women migrant workers do not receive any special health care resources or benefits. Also, as per definition clause in Section 2 (m) of the Act, unorganised workers are persons who are not covered under several other social security legislations including the Maternity Benefit Act, 1961. This means that migrant women do not have access to maternity leave and other benefits available to women employees working in organised or other sectors. This is against the Constitutional rights guaranteed under Article 42 of the Constitution of India.

Women migrant labourers who are working in the construction sites falls under The Building and Other Workers (Regulation of Employment and Conditions of Service) Act 1996. The Act provides various advantages to migrant women working in the construction sites such as creche facility, maternity benefits.

Even then, The Building and Other Workers (Regulation of Employment and Conditions of Service) Act 1996 falls short on various aspects. The registration procedure for workers is lengthy and cumbersome. Section 33 provides for Latrines and urinals, section 34 provides for accommodation facilities for building workers. Both section 33 and 34 does not state that there shall be separate latrines, urinals or accommodation facilities for women building workers. Rule 243 of The Building and Other Workers (Regulation of Employment and Conditions of Service) Central Rules, 1998 provides for separate urinals or latrines for male and female building workers, but there is no mention of separate accommodation. Also, there is no mention of grievance redressal mechanism for the women construction workers. If a women construction worker is sexually abused, she has no redressal mechanism provided by the Act. Also, the Act is silent on maternity or reproductive health of women construction workers. In an Economic and Political Weekly Article of 2012 titled '*Strong Women, Weak Bodies, Muted Voices: Women Construction Workers in Delhi*<sup>4</sup>', by Aaradhana J Dalmia, the author states that most of the women construction workers are completely unaware of the existence of this legislation. Women building workers do not know that they have to register with the welfare boards to avail social security benefits provided under the Act. Also, the author states that none of the women migrant workers whom she has interviewed has received any maternity benefits under the Act. Also, the article states that while menstruation, the migrant women are hesitant to ask for leave, have no money or resources to buy sanitary napkins and have no facilities for

---

<sup>4</sup> Vol. 47, No. 26/27, Economic and Political Weekly, pp. 249-255 (2012)

its disposal after usage.

## IMPACT OF COVID-19 ON MIGRANT WOMEN

Covid- 19 has affected the lives of people all around the world. When the Indian government declared complete national lockdown in May 2020, the entire country was helpless. But this helplessness has affected people working in the unorganized sector drastically, especially, women migrant labourers. Firstly, there is job insecurity in unorganized sectors. Most construction works got halted due to the lock down as a result of which many construction workers lost their only source of income. Many families started sending back their house helps or maids due to social distancing norms or financial crisis. Due to lack of job in times of the pandemic, migrant women will face extreme poverty and food scarcity. When faced with poverty in families, women are the ones who compromises on the amount of food that she consumes. They will not be able to consume enough calories of food on a daily basis, which will affect the health of such women on a long-term basis. When faced with poverty in families, women are the ones who compromises on the amount of food that she consumes. When faced with poverty in families, women are the ones who compromises on the amount of food that she consumes. Majority of the interstate migrant women do not have access to ration due to the administrative hurdles in obtaining ration cards.

In a study conducted by the Eurasian Geography and Economics, a domestic worker stated that when her family cannot even afford food due to loss of livelihood during the pandemic, she cannot think about spending money on pads during menstruation<sup>5</sup>. Hence, migrant women are left with no options, but to use clothes during the menstrual cycle. Another women stated that due to lockdown, as most people stay at homes, the toilets are always over crowded. They have no means for using clean or hygienic toilet facilities.

Another concern with regard to the accessibility of health care services to the migrant women is that most of the state or local governments does not have proper data with regard to the number of migrants staying in a particular area for providing any health care services. Also, during Covid-19, the government hospital carried provided treatment on basis of priority and for high risk patients. Migrant women workers who do not have proper documents or who

---

<sup>5</sup> Abdul Azeez EP, Dandub Palzor Negi, Asha Rani, Senthil Kumar AP, *The impact of Covid-19 on migrant women workers in India*, 62:1, Eurasian Geography and Economics, pp. 93- 112 (2021)

belong to a different language speaking state would not receive treatments like other persons<sup>6</sup>. Apart from this, during the pandemics, even for general consultation the hospital authorities asked for RT- PCR test results which is done not prior to 72 hours. Poor migrant women who do not have income would not be able to access health care services due to the compulsory RT-PCR test that the hospital authorities conduct mandatorily.

There is also increased sexual assault and domestic violence on migrant women due to Covid-19. As most men lost their jobs and had to stay at homes during the lock down, they took this anger on their wives. Also, migrant women who had to stay at their homes without jobs faced assault from their husband and other family members. This affected them mentally also. There are also chances of increased sexual exploitation amongst migrant women as they did not have proper accommodation facilities and were stranded at different places due to the sudden lock down announced by the government during the lockdown.

The National Commission for Women issued an advisory Do. No. 6-14(1)/ 2020-21/ NCW (L) dated 7<sup>th</sup> April 2020 for preventing the spread of Covid-19 amongst internal migrant women<sup>7</sup>. The advisory consists of guidelines for protecting the health of migrant women which are summarized as follows:

- (i) To ensure that migrant women and girls have access to nutritious food and safe drinking water. Also, there should be free supply of essential food items and medicines provided to migrant irrespective of looking at their registration status.
- (ii) Provide proper accommodation to migrant women and girls to avoid overcrowding, which in turn could result in spreading of Covid-19 infection.
- (iii) To ensure that the accommodation provided to migrant women workers have clean and hygienic sanitation facilities.
- (iv) To provide door to door delivery of contraceptives, free sanitary pads and special consideration for lactating women along with ration. To see that nutritious meals are provided to pregnant and lactating women.
- (v) To ensure that migrant women can access health care services and medical care.
- (vi) To build Covid- 19 screening centers nearby areas where migrant workers are located for regularly monitoring symptoms on migrant women.

---

<sup>6</sup> Lorenzo Guadagno, *Migrants and the Covid-19 Pandemic: An initial analysis*, Migration Research Series, International Organization for Migration (IOM), Geneva,, United Nations (2020)

<sup>7</sup> Can be accessed at [https://wcd.nic.in/sites/default/files/Advisory\\_dated\\_7th\\_April\\_2020\\_by\\_NCW\\_0.pdf](https://wcd.nic.in/sites/default/files/Advisory_dated_7th_April_2020_by_NCW_0.pdf)

- (vii) To look after reproductive health and emergency situations for migrant women especially complications that arise due to pregnancy.
- (viii) To ensure that mental well-being of migrant women are looked after who have undergone recent incidents of trauma due the pandemics such as loss of family, abortion etc.
- (ix) Provide soaps, sanitizers and handmade masks to migrant women.

The above-mentioned guidelines issued by the National Commission for women are gender responsive and aims in helping migrant women who were affected due to the pandemics. However, there is no adequate data to see of these guidelines were followed or successfully implemented since these were issued in the form of guidelines. It was reported that these guidelines were not implemented in most of the states<sup>8</sup>. It is the inadequacy of the government to frame policies without making sure that those policies have been implemented.

## CONCLUSION AND THE WAY AHEAD

All migrant women, irrespective of their migration or registration status should be given access to Covid-19 testing and free vaccination<sup>9</sup>. RTPCR testing should be made more affordable so that migrant workers, especially migrant women can access Covid- 19 testing. If migrant workers are not given affordable Covid-19 testing facilities and paid sick leaves, there will be more chances of spreading Covid-19<sup>10</sup>. There should be equitable and inclusive approach adopted by the government for including migrant women into health care policies of the government.

Another measure that can be taken by the government of India is to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990. India has also not ratified the International Labour Organisation's Convention on Decent Work for Domestic Workers (Convention no. 189). If India ratifies the above International conventions, then the human rights of migrant will be protected in India as per the International standards. India will have a further obligation to draft its National laws in par

---

<sup>8</sup> Lalitha Panicker, *Protect the rights of women migrant workers*, Hindustan Times, 3<sup>rd</sup> October, 2021, can be accessed at <https://www.hindustantimes.com/opinion/protect-the-rights-of-women-migrant-workers-101618664001450.html>

<sup>9</sup> Addressing the impacts of the Covid- 19 Pandemic on Women Migrant Workers, UN Women

<sup>10</sup> Laura Foley, *Nicola Piper, Covid-19 and women migrant workers: Impacts and Implications*, International Organization for Migration (IOM), Geneva (2020)

with the International laws for the protection of human rights of migrant workers. This will benefit migrant women for better access to health care services. As per Article 25 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990, the migrant workers are entitled to have conditions of work including health care services similar to that of other nationals. As per Article 28, migrant workers and members of their families shall have the right to receive any medical care that is urgently required for the preservation of their life or the avoidance of irreparable harm to their health on the basis of equality of treatment with nationals of the State concerned. Such emergency medical care shall not be refused them by reason of any irregularity with regard to stay or employment<sup>11</sup>. Further, Article 43 and 70 states that the state will have to provide migrant workers given equal access to health services like other national or state employees. Thus, ratification international conventions will compel the national government for implementing legislations or policies in favor of the migrant workers, especially for the protection of health of migrant women. National laws should be framed in such a way that there should not be discrimination against migrant women based on their sex<sup>12</sup>.

The nature of work undertaken by migrant workers is distinct and hence, it requires a separate legislation. Only if there is a separate legislation for migrant workers, it can be effectively implemented for the benefit of migrant workers, especially for providing health care resources to migrant women. The insecurities and problems faced by migrant workers should also be analysed from a gender-based perspective. This is the reason why NITI Aayog's National Policy on Migrant Workers. It is a matter of trepidation that migrant women are unrecognized by the new draft legislation. The specific needs of migrant women have to be acknowledged like affordable and accessible sanitation facilities, health and reproductive services<sup>13</sup>.

Even if a new legislation comes into existence, the hurdles faced by migrant women should be properly studied and analysed. Before making a legislation there should be data collection, it is essential to know the number of migrant women, age group of women who are placed for work in different states, their past health records, if any, have to be collected and stored when

---

<sup>11</sup> International Convention on the Protection of Rights of all the Migrant Workers and Members of their Families (Adopted by General Assembly Resolution 45/158, on December 18, 1990), UN, can be accessed at <https://www.ohchr.org/en/professionalinterest/pages/cmw.aspx>

<sup>12</sup> Prasad Kariyawasam, *Protecting the Rights of Migrant Workers*, The Wire (2017), can be accessed at <https://thewire.in/women/migrant-women-workers>

<sup>13</sup> Abhishek Sekharan, *A Year Since the Lockdown, Women Migrant Workers Remain Unrecognized*, The Wire, (2021), can be accessed at <https://thewire.in/women/women-migrant-workers-india-lockdown>



registration process is done. A new legislation should provide better health care facilities to migrant women like regular free health checkups. The government whilst coming up with a new legislation should ensure that migrant women workers have access to hygienic sanitation facilities, maternity benefits, access to free medicines and other health care benefits. Unlike the previous legislations, the registration process for migrants to be included in any government scheme should be made an easy procedure, and for those migrants who are not able to do it themselves should be given help for completing the registration process. This can be done with the help of Panchayaths or Municipalities. And, finally, there should be more education and awareness. Most of the migrant workers are unaware of any existing legislations in their favor. Only if the migrant workers are made aware of their rights, they will be able to access the benefits provided by such legislations and to seek remedy also, there should be knowledge about existing rights.