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GENDER DISCRIMINATION TO PROTECTION: LEGAL RESPONSES TO THE PLIGHT OF MIGRANT WOMEN BUILDING WORKERS

Sangeeta Rehman

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Ph.D Research Scholar

School of Legal Studies, Seacom Skills University,
Bolpur, West Bengal

Dr. Kishwar Parween

Supervisor

School of Legal Studies, Seacom Skills University,
Bolpur West Bengal

ABSTRACT: The increasing participation of women in inter-State migration for employment in the building construction sector has brought to the forefront a range of legal, social and economic concerns that remain inadequately addressed in existing frameworks. Migrant women building workers of Murshidabad occupy a particularly vulnerable position due to the intersection of gender based disadvantage, informal employment structures and the answer in it is associated with mobility. This study examines the emerging issues affecting this group including wage discrimination, lack of social security, unsafe working, and living conditions, limited access to healthcare and the absence of child care and maternity support .

This study analyses the constitutional framework that underpins the protection of migrant women building workers, with particular emphasis on the principles of equality, dignity and protection against exploitation. It further evaluates the effectiveness of statutory provision governing inter-state migrant labour and the construction sector, highlighting the gaps between legislative intent and actual implementation¹. The study also explores judicial contribution, adopting doctrinal approaches to understand how courts have interpreted and expanded labour rights in favour of vulnerable groups. By situating the experiences of migrant women building workers within a broader legal context, the study reveals that the challenges they face are not only legal but are deeply embedded in structural inequalities and administrative inefficiencies. The findings underscore the need for a mere inclusive and gender-sensitive approach to labour regulation, along with stronger enforcement mechanisms and inter-state coordination. Ultimately, the study advocates for a shift towards a rights-based and accessible framework that ensures meaningful realisation of legal protection for migrant women workers in the construction sector.

¹ Global Compact for Migration (2018, July) Global Compact for Migration. Retrieved from https://refugeesigrants.un.org/sites/default/files/180713_

Keywords: Migrant Woman Building Workers, Gender discrimination, challenges, legal protection , Judicial Contribution

INTRODUCTION

Migrant women building workers are the women who move from one place to another in search of work in the building construction sectors. They usually move from villages or backward regions to work in construction jobs such as building houses, City Malls, Office buildings, or commercial buildings of the townplaces, cities or to other States. These women often work as Brick carriers, Sand/cement mixers, helpers to masons, Load carriers. Many of the Women do physically demanding work for long hours. The reasons that make them migrate to other states include poverty or unemployment in their home area, seasonal lack of farming work due to high price of seeds, debt or financial problems. They follow their family members or contractor groups for work in other states.

Migrant women building workers often face gender discrimination at the workplace. When somebody is treated unfairly and unequally on the basis of gender then it is termed as gender discrimination². The division between domestic responsibilities and undercompensated career labor remains highly fluid for women, culminating in extended workdays that regularly reach 16 hours. Far too often, they often had to work at hazardous workplaces stripped of basic human rights i.e. no social security, no compensation for injuries, and no access to clean water or healthcare. This is the reality for India's 20 million building workers, most of whom are rural migrants. They are part of an ongoing exodus, fleeing ecological ruin and deep poverty in the tribal belts of Bihar, Orissa, West Bengal, Chhattisgarh, Jharkhand, Assam, and Mizoram, leaving behind desperate families for the uncertain promise of megacities like Mumbai and Delhi, Bangalore, Kerala, TamilNadu.³

This can happen to women, men, or other gender identities, but women and girls are more commonly affected in many societies. The occasion in which gender discrimination is faced by the migrant women building workers are lower wages or paying women less than men for the same work, getting less skilled jobs even when capable, poor treatment at workplaces, Lack of maternity support or health care support. unhygienic living conditions ,working conditions, sexual abuse , poor health , Absence of proper safety facilities, difficulty in accessing education for their children, exploitation by contractors or middlemen. The International Labour Organization reports that there are 80 to 100 million migrant workers worldwide. A large percentage of these workers are women, who actually make up the majority of the migrant population in several countries. Experts call this growing trend the "feminization of migration," which is fueled by global economic shifts combined with deep-rooted gender roles and discrimination.⁴

INTERNATIONAL LEGAL FRAMEWORK

Several International laws and Organizations work to protect migrant women building workers from discrimination, exploitation, unsafe work, and unequal treatment.

International Labour Organization Conventions create international labour standards for the building workers.

- 1.To overcome unfair treatments, Violence and Harassment Convention, 2019 (No. 190) has been established. This provides protection towards the building workers from workplace harassment and violence, including sexual harassment.
2. The United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) has been established to protect women so it is often called "international bill of rights for women.". It requires countries to eliminate discrimination against women. It also ensures equal employment

² O' Neil T, Fleury A, *Women on the move: migration,gender equality and the 2030 agenda for sustainable development*. Swiss Agency for Development and Cooperation SDC, Foresti M July (2016) . Retrieved from <https://www.odi.org/sites/odi.org.uk/files/resource-documents/10731.pdf>

³ Ranjeeta Mukherjee , *Rights of the woman over her body a socio legal study of the woman over her body a socio legal study with special reference to tribal and migrant labourers of the state of Jharkhand*, Patna University,(2015) Retrieved from <https://hdl.handle.net/10603/276752>

⁴ Samira Savoury, *Unique Challenges faced by Women in the Construction Industry*, July (2022). Retrieved from <https://www.linkedin.com/pulse/unique-challenges-faced-women-construction-industry-samira-savoury>

opportunities to protect women workers' health and safety and provide maternity protection. This applies to migrant women building workers too.

3. The Universal Declaration of Human Rights (UDHR) was adopted by the UN in 1948. It states that every person has rights such as Equality before law, Equal pay for equal work, Safe and dignified working conditions, Freedom from discrimination.

4. International Covenant on Economic, Social and Cultural Rights (ICESCR). This treaty recognizes the Right to fair wages, Safe working conditions, Social security and Protection of working women.

5. Sustainable Development Goals (SDGs) . The UN Sustainable Development Goals support for Gender Equality (Goal 5), Decent Work and Economic Growth (Goal 8) Reduction of inequalities as these goals encourage governments to improve conditions for migrant women labourers.

NATIONAL LEGAL FRAMEWORK

Constitutional provisions : The constitutional provisions for safeguarding migrant women building workers in India must be understood through a gender-sensitive reading of the broader guarantees of equality, dignity, and social justice embedded in the Constitution. Although migrant women workers are not explicitly identified as a separate category, the Constitution, through its Fundamental Rights and Directive Principles of State Policy, provides a strong normative basis for their protection, particularly in light of their dual vulnerability as migrants and as women engaged in informal labour.

At the level of Fundamental Rights⁵ ensures equality before the law and equal protection of the laws. For migrant women in the construction sector, this provision assumes importance in addressing discriminatory practices such as unequal wages, denial of opportunities, and exclusion from welfare schemes. Article 15(1) prohibits discrimination on grounds including sex and place of birth, thereby directly addressing two key axes of marginalisation faced by migrant women building workers⁶. More importantly, Article 15(3) empowers the State to make special provisions for women and children, providing a constitutional justification for targeted welfare measures, such as maternity benefits, childcare facilities, and protective labour regulations⁷.

Article 19(1)(d) and (e), guaranteeing freedom of movement and residence across the territory of India, facilitate the very process of migration⁸. However, for migrant women building workers, the exercise of these freedoms is often constrained by socio-economic conditions and safety concerns. In this context, constitutional protections must be read in a manner that obligates the State not only to permit mobility but also to ensure safe and dignified conditions for those who migrate for work to different places.

A particularly significant provision is Article 21, which guarantees the right to life and personal liberty⁹. Judicial interpretation has expanded this right to include the right to life with dignity, access to health, shelter, and a safe working environment. For migrant women in building work, this translates into an entitlement to humane living conditions at worksites, protection from occupational hazards, and access to basic healthcare, including reproductive and maternal health services.

Article 23, which prohibits trafficking and forced labour, is crucial in addressing exploitative labour arrangements that disproportionately affect migrant women¹⁰. Instances of wage withholding, coercive employment conditions, and dependency on contractors can fall within the ambit of forced labour, thereby invoking constitutional protection. This provision is particularly relevant in situations where women building workers, due to economic distress or social constraints, are unable to freely negotiate the terms of their employment.

⁵ The Constitution of India , art.14

⁶ The Constitution of India , art.15 (1)

⁷ The Constitution of India , art. 15 (3)

⁸ The Constitution of India , art.19(1) (d); (e)

⁹ The Constitution of India , art. 21

¹⁰ The Constitution of India , art . 23

The Directive Principles of State Policy¹¹ further reinforce these protections by guiding the State in shaping labour welfare policies. Article 39(a) directs the State to ensure adequate means of livelihood for all citizens, while Article 39(d) mandates equal pay for equal work for both men and women, directly addressing gender-based wage disparities. Article 42 is especially significant, as it calls for just and humane conditions of work and maternity relief, which are critical concerns for migrant women engaged in physically demanding construction activities. Similarly, Article 41 supports the right to work and public assistance in cases of sickness and unemployment, while Article 43 envisions a living wage and decent standard of life.

The constitutional framework also derives strength from judicial activism, where courts have interpreted these provisions in a progressive manner to extend protections to vulnerable groups, including women workers in informal sectors. Through such interpretations, the judiciary has emphasized the State's obligation to ensure that labour laws are not merely symbolic but are effectively implemented to reach those most in need.

In essence, the Constitution provides a comprehensive and flexible framework capable of addressing the specific challenges faced by migrant women building workers. However, the realisation of these constitutional guarantees depends largely on their translation into concrete legislative measures and the effectiveness of their enforcement, particularly in contexts where migration, poverty, and gender inequality intersect.

Statutory provisions: The statutory framework for safeguarding migrant women building workers in India has evolved through a combination of labour legislations aimed at regulating employment conditions in the construction sector as well as laws specifically addressing inter-state migration and gender-based vulnerabilities. While these enactments do not always exclusively focus on migrant women building workers, their combined application provides a legal structure intended to secure welfare, safety, and dignity for this particularly vulnerable group.

A central piece of legislation is the **Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979**. This Act was enacted to regulate the employment of inter-state migrant workers and to prevent their exploitation by contractors. It mandates registration of establishments and licensing of contractors, ensuring that workers are recruited through legal channels. For migrant women building workers, the Act is significant as it provides for wage parity with local workers, displacement allowance, journey allowance, and suitable working conditions. However, in practice, the implementation remains inconsistent, and women workers often remain outside formal registration mechanisms.

Equally important is the **Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996**, along with the associated Welfare Cess Act. This legislation specifically targets the construction sector and establishes welfare boards in different states to provide benefits such as health care, maternity assistance, accident compensation, and pensions. For migrant women building workers, provisions relating to maternity benefits, crèche facilities, and health and safety measures are particularly relevant. Nevertheless, access to these benefits is often hindered by procedural barriers, lack of awareness, and the transient nature of migrant labour.

The Code on Social Security, 2020 represents a more recent attempt to consolidate and expand social security coverage, including for unorganised workers, gig workers, and inter-state migrants. It provides a framework for registration and delivery of benefits such as insurance, maternity support, and old-age protection. Migrant women building workers, being largely part of the unorganised sector, stand to benefit from such provisions, provided that effective mechanisms for identification and enrolment are implemented.

In addition, **the Occupational Safety, Health and Working Conditions Code, 2020** incorporates provisions relating to inter-state migrant workers and seeks to ensure safe and humane working environments. It addresses issues such as working hours, sanitation, and welfare facilities at worksites. For women building workers, these provisions are critical in reducing occupational risks and ensuring basic dignity at the workplace.

¹¹ The Constitution of India, art. 39 (a) ; art 39 (d)

Gender-specific protections are further reinforced through legislations such as the **Maternity Benefit Act, 1961**, which guarantees paid maternity leave and related benefits, and the **Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013**, which provides mechanisms for addressing workplace harassment. Although these laws are applicable across sectors, their enforcement in informal construction settings remains a challenge, particularly for migrant women building workers, who may lack access to formal complaint systems.

The **Equal Remuneration Act, 1976** (now subsumed under the Code on Wages, 2019) also plays a role in ensuring that women workers receive equal pay for equal work, addressing a persistent issue in the construction sector where wage disparities are common.

Overall, the statutory provisions form a comprehensive legal framework aimed at safeguarding migrant women building workers. However, a significant gap exists between legislative intent and ground-level reality. Issues such as inadequate implementation, lack of awareness, bureaucratic complexities, and the informal nature of employment continue to limit the effectiveness of these laws. Addressing these gaps requires not only strengthening enforcement mechanisms but also adopting a more inclusive and accessible approach to labour welfare administration, particularly for migrant women workers. The women building workers are ensured with the security before the law and equal protection regardless of any status. The women building workers are ensured with the security before the law and equal protection regardless of any status.

CHALLENGES

Emerging issues concerning migrant women engaged in the building and construction sector in India reflect a complex intersection of gender, labour mobility, and structural inequality. While migration for work has historically been male-dominated, there has been a visible increase in the participation of women in construction-related activities, particularly from economically weaker regions. This shift, however, has not been accompanied by adequate legal protection, social recognition, or institutional support, giving rise to a number of pressing concerns.

One of the foremost issues is the persistent informality of employment. Migrant women building workers are often engaged through contractors or intermediaries, with little or no written agreements. This not only results in wage insecurity but also reinforces dependency and vulnerability¹². Women workers are frequently paid less than their male counterparts for similar work, reflecting entrenched gender disparities in wage structures. The absence of proper documentation further excludes them from accessing statutory benefits under labour welfare legislations.

Another significant concern is the lack of safe and adequate living conditions. Migrant women building workers typically reside in temporary settlements near construction sites, where basic amenities such as clean drinking water, sanitation, and electricity are either insufficient or entirely absent. This situation disproportionately affects women, especially in terms of personal hygiene, safety, and dignity¹³. The absence of childcare facilities further compounds their challenges, as many are compelled to bring young children to hazardous work environments¹⁴.

Health-related vulnerabilities also constitute a major emerging issue. Women in construction work are exposed to physically demanding tasks without appropriate protective equipment. Prolonged exposure to dust, heavy lifting, and unsafe working conditions adversely affects their health. Additionally, reproductive health concerns remain largely unaddressed, as access to healthcare services is limited and irregular for migrant populations. Maternity benefits, though provided under certain laws, rarely reach these workers in practice.

The issue of social security remains another area of concern. Despite legislative measures aimed at safeguarding the interests of construction workers, including welfare boards, the registration of migrant women building workers is often low due to lack of awareness, bureaucratic hurdles, and mobility of labour.

¹² <https://unbiasthenews.org/india-women-migrant-workers-struggle-to-rebuild-their-lives/>

¹³ https://nhrc.nic.in/assets/uploads/training_projects/CRS_HR_Issues_Migrant_Workers_Kerala20042018.pdf

¹⁴ <https://unbiasthenews.org/india-women-migrant-workers-struggle-to-rebuild-their-lives/>

Consequently, benefits such as insurance, pensions, and educational assistance for children remain inaccessible to a large segment of this population. Further, migrant women building workers are particularly susceptible to exploitation and harassment. The absence of formal grievance redressal mechanisms at worksites, coupled with fear of job loss, discourages reporting of abuse. Language barriers, unfamiliarity with local systems, and isolation from support networks exacerbate their marginalisation.

Lastly, the invisibility of migrant women building workers in policy discourse is itself an emerging issue. Data collection mechanisms often fail to capture gender-disaggregated information on migrant labour, leading to gaps in policy formulation and implementation. As a result, interventions remain inadequately tailored to address their specific needs.

Thus, the emerging issues of migrant women building workers highlight the urgent need for a more gender-sensitive and inclusive approach within labour law frameworks and their enforcement. Addressing these concerns requires not only strengthening legal provisions but also ensuring their effective implementation on the ground, alongside broader socio-economic interventions aimed at empowerment and protection.

JUDICIAL DECISIONS

Here are some important Indian court cases related to gender discrimination of women workers, including women at construction and labour worksites:

1. *People's Union for Democratic Rights v. Union of India*

This case involved workers employed at the construction sites for the 1982 Asian Games in New Delhi. Investigations showed that Women workers were paid less than men, Labour laws were violated, Workers faced exploitation by contractors. The Court decided that the Supreme Court of India said that Equal pay for equal work must be followed. Women cannot be paid less for the same type of work. The government is responsible for ensuring labour law protection, even through contractors.

2. *Vishaka v. State of Rajasthan*

The case arose after the assault of a woman social worker, Bhanwari Devi, while working in rural development activities. Importance for construction and labour workplaces. The court created the famous Vishaka Guidelines to prevent Sexual harassment and provided safety at workplaces for women.

3. *Mackinnon Mackenzie v. Audrey D'Costa*

The issue is that a woman employee was paid less than male employees doing similar work. The Judgment by the Supreme Court held that Gender-based pay discrimination is illegal. Women must receive equal remuneration for similar work.

4. *Smt. Bimla Rani v. Appellate Authority under Equal Remuneration Act*

The issue is that the Women workers were given lower pay scales than men despite doing similar work. The Judgment of The Delhi High Court ruled that the Employers cannot justify unequal wages only because workers are women.

Different job titles cannot hide discrimination if the actual work is similar. Judicial contribution to the protection of migrant women building workers in India has been both significant and evolving. The judiciary has not always addressed migrant women construction workers as a distinct category, its broader engagement with issues of labour rights, gender justice, and human dignity has created an interpretative framework that indirectly but meaningfully advances their protection. From a doctrinal perspective, the higher judiciary, especially the Supreme Court, has played a transformative role in expanding the scope of constitutional provisions. Through purposive interpretation of fundamental rights, particularly Articles 14, 21, and 23, the courts have articulated a jurisprudence that emphasises dignity, non-exploitation, and substantive equality. In

several landmark decisions relating to labour welfare and bonded labour, the judiciary has interpreted forced labour in an expansive manner to include situations of economic compulsion and unequal bargaining power. This doctrinal shift is highly relevant for migrant women building workers, who often operate within coercive and exploitative labour arrangements mediated by contractors. The judiciary has also contributed by reinforcing the accountability of the State in implementing welfare legislations. Courts have, in multiple instances, directed governments to ensure proper enforcement of laws relating to construction workers, including the functioning of welfare boards and disbursement of benefits. Such interventions reflect a doctrinal commitment to bridging the gap between legislative intent and practical realisation, which is particularly crucial for migrant women workers who face systemic barriers in accessing statutory entitlements.

Courts have recognised that labour issues cannot be viewed in isolation from broader social realities such as poverty, illiteracy, gender discrimination, and migration-induced vulnerability. In matters involving women workers, judicial observations have acknowledged the additional burdens of unpaid care work, lack of childcare facilities, and exposure to unsafe working and living conditions. This broader lens enables a more contextual and nuanced understanding of the lived experiences of migrant women in the construction sector.

The influence of international legal norms and comparative perspectives further enriches judicial contribution. Indian courts have, on various occasions, referred to international conventions and standards, such as those of the International Labour Organization, to interpret domestic laws in a progressive manner. Principles relating to decent work, equal remuneration, maternity protection, and safe working conditions have informed judicial thinking, even when such norms are not explicitly codified in national legislation. Comparative references to practices in other jurisdictions have also, at times, guided the courts in emphasising the need for inclusive labour protections and gender-sensitive policies.

Public Interest Litigation (PIL) has emerged as an important procedural innovation through which the judiciary has addressed the concerns of unorganised and migrant workers. By relaxing traditional rules of locus standi, the courts have enabled civil society organisations and concerned individuals to bring issues affecting vulnerable groups, including women construction workers, to judicial attention. This has allowed the judiciary to respond to systemic issues such as non-registration of workers, denial of welfare benefits, and unsafe working conditions. At the same time, it must be acknowledged that judicial interventions, while progressive, often operate within certain limitations. The absence of consistent follow-up mechanisms and dependence on executive compliance can restrict the long-term impact of judicial directives. Moreover, the specific concerns of migrant women workers may not always receive focused attention unless explicitly raised in litigation.

In sum, the judiciary's contribution, viewed through doctrinal expansion, interdisciplinary sensitivity, and comparative openness, has played a crucial role in shaping a rights-based framework for the protection of vulnerable labour groups. For migrant women building workers, this evolving jurisprudence offers an important foundation, even as it underscores the need for more targeted and sustained judicial engagement with their specific conditions and challenges.

CONCLUSION

The condition of migrant women building workers in India reflects a layered reality shaped by migration, gender inequality, and the informal nature of the construction sector. The constitutional framework provides a strong normative foundation grounded in equality, dignity, and protection against exploitation, while statutory provisions seek to translate these ideals into tangible welfare measures and labour safeguards. Judicial interventions have further strengthened this framework by adopting expansive, rights-oriented interpretations and by drawing upon interdisciplinary and comparative perspectives. However, despite the presence of an elaborate legal and institutional structure, the lived experiences of migrant women workers reveal a persistent gap between law and practice. Irregular registration, lack of awareness, administrative inefficiencies, and the transient character of migration continue to exclude many women from accessing even basic entitlements. Gender-specific vulnerabilities such as wage discrimination, inadequate maternity

protection, absence of childcare, and exposure to unsafe working and living conditions remain insufficiently addressed. Thus, the issue is not merely the absence of law, but the inadequacy of its implementation and the limited reach of welfare mechanisms. In essence, safeguarding migrant women building workers requires a shift from a purely formal legal approach to a more inclusive, accessible, and gender-responsive system that recognises their specific socio-economic realities. Only through effective enforcement, institutional accountability, and targeted policy interventions can the constitutional promise of social justice be meaningfully realised for this marginalised group.

SUGGESTION

1. A foremost requirement is the strengthening of implementation mechanisms. Registration processes for migrant construction workers should be simplified and made more accessible, particularly through mobile and digital platforms that account for their mobility. Special outreach programmes must be designed to ensure that migrant women workers are aware of their rights and are able to enrol in welfare schemes without procedural obstacles.
2. There is also a need for gender-sensitive reforms within existing labour laws and welfare schemes. Provisions relating to maternity benefits, crèche facilities, and healthcare should be strictly enforced at construction sites. Employers and contractors must be held accountable for providing basic amenities such as safe accommodation, sanitation, and drinking water, with particular attention to the needs of women.
3. Inter-state coordination is another critical area. Since migrant workers move across state boundaries, there should be greater collaboration between source and destination states to ensure portability of benefits, including social security, healthcare, and welfare entitlements. A unified database of registered workers could help in tracking and delivering benefits more effectively.
4. Further, grievance redressal mechanisms must be strengthened and made more accessible. Dedicated helplines, legal aid services, and complaint forums should be established to address issues such as wage disputes, harassment, and exploitation. These mechanisms should be sensitive to language barriers and socio-cultural constraints faced by migrant women.
5. Capacity building and sensitisation of officials, contractors, and employers is equally important. Training programmes should emphasise gender equality, labour rights, and the specific vulnerabilities of migrant women workers to ensure a more humane and lawful work environment.
6. Lastly, greater involvement of civil society organisations, trade unions, and local governance institutions can play a crucial role in bridging the gap between law and practice. Community-based interventions, awareness campaigns, and collective organisation among workers can enhance both access to rights and bargaining power.

Taken together, these measures can contribute towards a more effective and inclusive framework that not only protects migrant women building workers but also empowers them within the broader socio-economic landscape.

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