

Labour Rights Of Women Construction Workers In India: A Socio-Legal Perspective

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ABSTRACT

Neo-liberal policies introduced in 1991 to achieve wealth and profit have led to the decreasing social character of production in India due to privatization and deregulation. The nature of the appropriation of material resources and power by the private players in India's growing market economy has widened the gap between the rich and poor. The increasing monopoly of business enterprises and the impact of global forces of capital have created underdevelopment and marginalization of workers. The capitalist nature of development in India has generated massive growth discounting the labour rights of workers thereby leading to social inequality and domination of workers. India's real estate industry faced a boom with a spiralling increase in the information technology and information technology-enabled services sector leading to the emergence of urban metros and urban industrial hubs due to privatization. The real-estate dynamics in India is directly influenced by the growth of the construction sector. The construction sector comprises unskilled, skilled and semi-skilled workers. Women comprise a significant percentage of the informal work-force in the construction sector. The intersections of gender and class interplay leading to subversion and marginalization of women construction workers in particular. This qualitative research study employs narrative analysis of interviews with women construction workers to explore the scope of labour rights of women construction workers in India through a critical examination of India's labour laws.

Keywords- labour, neoliberalism, construction, marginalization, development

Background

Neo-liberalism and Informal Economy in India

The neo-liberal regime emerged in India with the institutionalization of neo-liberal policies such as liberalization, privatization and globalization in 1991. With profit maximization and wealth generation goals, India witnessed a massive expansion of the informal sector and decrease in the growth of the organized sector (Kareem,2021).

The focus on profit maximization directly led to subversion of India's working class. Neoliberalism promotes market fundamentalism and capitalist ideology. It gives significance to inflows of foreign capital and economic facets of development. Development in the larger social context in India experienced a paradigmatic shift in the post-globalization era. During this period we began to experience decreasing dimensions of human and social development. The growth in Gross Domestic Product is a significant outcome of neoliberalism. According to International Socialist Review in the article, *Austerity, neoliberalism and the Indian working class*' (2021) India's transition into neoliberalism has resulted in exploitation of India's working class through private appropriation of resources and dispossession (Shingavi,2021).

C.P. Chandrasekhar in the article, *Indian neoliberalism: A toxic gift from Indian neoliberalism*' published in Frontline in 2021 discusses three major highlights as outcomes of neo-liberalism in the 1980s. The neo-liberal

conditionalities have evolved tremendously over the years and today's informal economy is a result of 1980s neo-liberalist strategies. The three factors are India's access to global finance, expansion of Gross Domestic Product in India and extensive dependence on foreign capital. The three key highlights during this period were coupled with growth of human poverty and marginalization of worker communities.

Deregulation led to decreased social accountability of larger business corporations. It also led to an increase in the number of trans-national corporations with limitations imposed on small enterprises (Athreya,2021). Raju J. Das (2015) in the article published in the Journal of Contemporary Asia titled, '*Critical Observations on Neo-liberalism and India's New Policy*' cites Harvey (2005) to describe the notion of neo-liberal practice. Neo-liberalism involves the nature of control of working masses by the private players in the market economy defined by the animal spirit of entrepreneurship. The deregulated market generates a massive economic growth impasse at the expense of the labour and rights of the working class. The *bourgeoisie-proletariat* discourse is manifested in the neo-liberal ideology and action resulting in a large majority of losers (proletariats) and smaller minority of winners (capitalists) (R.J.Das,2015).

Literature Review

India's Working Class and Women Construction Workers in Neoliberal Era

Bill Crane defines an informal worker as, "an informal worker, most likely, has no written contract, no set wage, no access to workplace protection law, no right to organize, no guarantee of ongoing employment, no pension, and so on" (Bill Crane,2021). According to the International Labour Organization (ILO) policy brief, nine out of ten workers are in the informal economy with increased risk to labour exploitation. The report by ILO 'Skills training and lifelong learning in India- Challenges for Trade Unions' discusses the nature of the high number of workforce engaged in informal employment in India. According to a news report published by Business Today in July 2022, there are over 27.69 crore informal sector workers registered in the e-shram portal. In the online edition of Foreign Policy episode on, 'Hidden Economics of Remarkable Women'(2021), it is reported that India has the highest number of women in informal employment. The International Labour Organization records that around 81.8 percent of the women workforce in India is engaged in informal employment.

The Scroll article on Women and Work published in 2021, written by Shalini Singh titled, 'In India's Informal Economy, Crores of Women Face Gender Bias and Security', women in the informal sector engage in a diversity of jobs namely home-based embroidering, waste collectors, garment workers etc. They have no access to pension schemes and social security measures and are exposed to financial and social vulnerabilities due to their low wages and lack of bargaining power (Strengthening Socio-Economic Rights of Women in the Informal Economy, IWWAGE and SEWA,2020).

In a news item titled (2023), 'Women Workers in Construction and Real Estate Sector Earn 30-40% less than Male Workers: Report' published in the Economic Times reports that women construction workers in the informal sector earn 30-40% less than their male counterparts as recorded in the Primus Partners and World Trade Organization report 'Pink Collar Skilling: Unleashing the Women's Power in the Real Estate Sector' . Gender Inequality is engrained in the dynamics of the construction sector with women workers disadvantaged in all dimensions. The construction sector is divided into skilled, semi-skilled and unskilled labour.

In the construction sector, women are mostly engaged in labour intensive highly hazardous work. The GOLD VI report on the Pathways to urban and territorial equality, 'The case of female workers in India's construction sector' published by Indian Institute of Human Settlements (IIHS) published in 2022 records that 93% of construction workers in India are construction workers without any social security and social protection of which 98% are women informal workers. Women construction workers often engage in carrying headloads, cement bags, breaking stones, mixing mortar and cement, sifting and cleaning. Women's labour in the construction work-site is devalued with degrading connotations as 'menial', 'cleaners' etc. They receive wages less than men though the work is equally labour intensive and hard (Lall, Ruchika and Divya Ravindranath 2022).

In an interview news report titled, 'Hurdles aplenty for women construction workers in Trichy' published in the Hindu in December 2022, V.K Rajendran, Trichy district president of Construction Workers Welfare Union affiliated to Communist Party of India (Marxist) states that women construction workers have no recourse though they work hard carrying sand,brick and stones.They silently suffer with no access to basic infrastructure such as toilet facilities affecting their physical health and menstrual hygiene.

The structure of hierarchy of the construction sector in the neo-liberal economy is defined by the bourgeoisie such as investors and developers occupying the apex of the industry pyramid. The investors and developers enter into agreements with subcontractors who solicit with micro-contractors for sourcing labour (Global Fund to End Modern Slavery, Tackling Labour Exploitation in the Construction Sector in India,2023).The complexity in the industry structure is defined by the nature of informality defining the work relations of men and women unskilled and semi-skilled workers.

Sujatha Madhok, National Commission for Women, New Delhi in the report on the status of women construction workers discusses the intensity of hard labour women construction workers are subjected to in the construction work. In concreting, it is estimated that women construction workers in the 8 hour shift carry

upto 32,000 kg of weight. (Gender-Based Violence and Harassment in the Construction Sector: Addressing Gaps between Policy and Implementation, IJPIEL, 2022).

The exploitation of women construction workers is a vicious cycle where women are exploited from the time they start seeking for a construction job to the completion of the task assigned in the construction work-site. The lack of formal channels and regulations governing their work structure traps these women construction workers in an endless cycle of dispossession, poverty, labour exploitation, sexual abuse in a highly patriarchal work-space. The overt feminization of women's labour in the construction work-site is a result of gender normative patterns of functioning that degrade women construction workers' labour as mere 'cleaners' and at times are not even recognized as 'construction workers'.

Subversion of Women Construction Workers in India : A Socio-Legal Perspective

The construction sector has the highest composition of women in the informal work-force. Its massive growth is associated with the proliferation of business tycoons in infrastructure and real estate industries. The post-pandemic scenario in the construction sector projects a paradigmatic shift from traditional to technology invasive practices. The proposed restructuring of the construction sector poses a major risk to women unskilled workers largely employed in the unskilled lower-most strata of the labour hierarchy in the construction sector in India. The article published by All India Central Council of Trade Unions titled, 'The Construction Sector: Changes, and the Union Practices' cites the report by the Second National Commission on Labour which states that the massive restructuring of the traditional labour market will result in the rapid elimination of women informal unskilled workers from the construction sector's labour market (AICCTU, 2022)

Women construction workers' social position in the construction sector labour hierarchy indicates subversion of women construction workers' identities and social status. It is also reflective of their daily struggles for daily wages primarily because of the informal, unregulated nature of their work structures. The unregulated nature of the work structure manifested with extreme degrees of casualness exacerbates the women construction workers' vulnerabilities. The woman construction worker's narrative of her daily routine as expressed by a participant of this research study as follows is illustrative of the nature of invisibilization of women construction workers by the state, employers, developers, investors, contractors and micro-contractors.

Chinnaponnu, aged 40 years, resident construction worker from Chennai says, "My day typically begins at 4 am and starts with cooking meals for my family members.. and completing the household chores before 7 am.. My children are studying in school and I have to ensure they are sent to school on time. I go to the labour stand located at Vinayagar temple bus stand at Pammal, Chennai. Each day involves waiting for contractors and masons to pick me up for construction work at the work-sites. I go along with other women construction workers.. I never go alone.. we negotiate for higher wages on certain days and it is difficult to convince them for higher wages as they say we are just engaged in carrying and cleaning work that is not very physically demanding and strenuous like masons and male construction workers. I just want to work for the day to feed my family and I go to work even for low wages.."

The narrative manifests the extremities of casualness and informality that subverts the social position of women construction workers in the construction sector's labour market. The overt dependence of these women construction workers on contractors and masons is an indicator of capitalist patriarchy that invisibilizes, marginalizes and subjugates the women construction workers' social existence and autonomy. This is a result of the nexus between the state and the bourgeoisie of the construction sector indicating a capitalistic collusion that is aimed at wealth generation primarily to meet the needs of the bourgeoisie class in India. This lopsided view of development largely underpinned by the unidimensional concept of economic development poses as a huge challenge to women construction workers' welfare.

The dismantling of the Building and Other Construction Workers Act, 1996 because of the newly amalgamated labour laws throws the women construction workers outside legal protection making them vulnerable and marginalized as their legal rights becomes elusive for the state outside the legal purview.

From a socio-legal perspective, law is understood as dynamically intertwined with the society encompassing social institutions, law, science, technology and culture. Socio-legal perspective views law from the context of statutes from the formal end of the spectrum to the socially institutionalized norms in the informal end of the spectrum (Galantar, M et.al; 2015). Hence, understanding the recently amalgamated labour laws namely The Code on Wages, 2019, The Industrial Relations Code, 2020, The Occupational Safety, Health and Working Conditions Code, 2020 and the Code on Social Security, 2020 from the social context of the India's working class is crucial to facilitate these exploited groups to achieve emancipation. In contemporary times, socio-legal perspective focuses on social construction of law and the significance of law in everyday life. From the contemporary dimension of the socio-legal approach, India's four labour laws fail to address the needs of the working class poor, in particular, the poor women workers. Positing the subversion of women workers in the construction sector from the intersectional feminist framework, the identities of gender and class is mutually constitutive. The relegation of women workers to the lowermost strata of the labour hierarchy in the construction sector is reflective of the workers' gendered experiences within the framework of class.

Research Methods

This paper is a qualitative study consisting of semi-structured interviews with women construction workers in Chennai. According to Creswell (1998), qualitative research is defined as, “Qualitative research is an inquiry process of understanding based on distinct methodological traditions of inquiry that explore a social or human problem”

This study presents five significant narratives of women construction workers from the excerpts of semi-structured interviews with 10 women construction workers conducted during the period January-April 2023 and employs purposive sampling. These narratives indicate the social implications of the lacuna in India’s labour laws experienced by women construction workers. The primary objective of this paper is to understand the social implications of the lacuna in labour legislations for women construction workers through a critical examination of labour laws in India. The narratives are iterated as narratives from the field through a critical appraisal of recently formulated labour laws.

Qualitative Research Study- Process

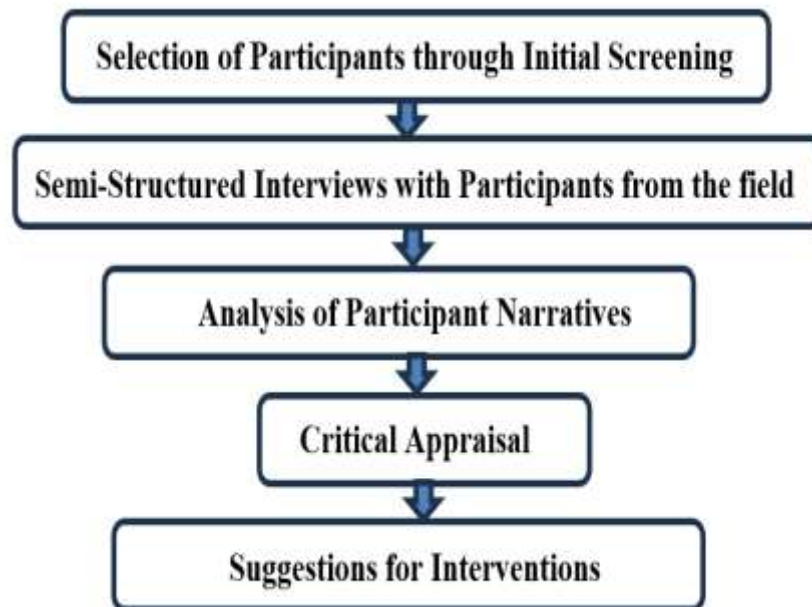


Figure 1: The Process of Qualitative Research Study

The process of narrative interpretation involves understanding of the narrative data, the meaning of the participants’ lived experiences in the particular socio-cultural context. Polkinghorne (1988) discusses that narrative meanings are expressions embedded in ordinary language.

This research paper is guided by the research question of understanding what is the scope of labour rights of women construction workers in India within the framework of new labour legislations. The participants of this study were women construction workers working full-time in the construction work-sites in Chennai. The participants were selected based on their gender and employment status. As the sampling frame is unknown and due to the infinite nature of the population, the researchers’ judgement and rationale in selection of the participants for the study adds value to this research. Hence, non-probability, non-random purposive sampling was used in this study. A sample-size of ten women construction workers was employed in this study.

The researchers conducted an initial screening interview process to select the participants for the study. Participants were well-informed about the purpose of the study and the willing participants were recruited for this study. The initial interview aimed at understanding the demographic background of the participants and recruitment of the participants for the study through informed consent.

The second interview was conducted with n=10, ten women construction workers and aimed at understanding the scope of labour rights of women construction workers within the framework of the newly instituted labour legislations by critically exploring the work narratives of women construction workers. The interviews were conducted by the researchers and documented in the field journal. Each interview lasted for about twenty minutes each. The documented interview excerpts were later read and re-read by the researchers to establish clarity on emerging theme. The emergent theme from the narratives was gendered work struggles of women construction workers in India. The excerpts of the interview that did not provide valuable insights were removed and pertinent narratives of women construction workers were selected for critical exploration in this study. The interview guide employed in this study is semi-structured and comprised of five to six questions. The questions primarily focussed on the following areas:

- What are the work regulations that you have to follow in the work-site as a woman construction worker?
- Do you have access to basic entitlements at the work-site?
- What are your significant daily work struggles at the construction work site as a woman construction worker?

The interview guide was prepared and validated by the research advisory team after the pilot interviews with two women construction workers in order to establish validity and reliability of the interview guide. Few changes were made after the pilot interviews. Jargons were removed and conversational language was used to enhance the effectiveness of the interview guide. The following is a discussion on the demographic background of the selected participants in this study.

Of the 10 participants of the study, two participants (n=2) are inter-state migrants from Andhra Pradesh and Karnataka, two are (n=2) inter-district migrants and six (n=6) are resident construction workers. The age of the participants ranged between 25-45 years. The mean age of the participants is 35 years. Two participants (n=2) had less than 10 years of work in the construction sector. Eight participants (n=8) had more than 10 years of work in the construction sector. Only two participant’s place of origin is outside Tamil Nadu from Andhra Pradesh and Karnataka. They, however, spoke fairly well in Tamil language. The other two (n=2) inter-district migrants’ places of origin are Thiruvallur and Kancheepuram.

The interview excerpts were read by the researchers for understanding the emergent codes. The codes were grouped into categories and from the categories theme was developed as represented in the tabulation below:

Table 1: Emergent Theme

CODES	CATEGORIES	THEME- Labour Rights of Women Construction Workers in India
Haggling for wages every day	Daily work struggles	Gendered work struggles of women construction workers in India
Longer working hours	Increased risk and uncertainty for women construction workers	
Child-care responsibilities		
No shelter, steady jobs and steady income		

The significant narratives of this study is presented for a critical exploration of the labour rights of women construction workers within the framework of new labour laws. The excerpts of the interview are iterated through an in-depth analysis to critically understand the nature and scope of new labour legislations in the context of women construction workers’ labour rights.

Narratives from the Field : A Critical Exploration
Manimozhi, Aged 45 years

Construction worker with 20 years of experience (Worked in several parts of Chennai and Bengaluru) says:“I was asked to come early to the site at 7 am and the work hours extended till 8 pm in the evening in one of the sites I worked near Anakaputhur. We were expected to finish the work at the earliest and all of us from Sithaal (Tamil language term to define an informal woman construction worker), Periyaal (Tamil language term to define an informal male construction worker) and Kothanar (Tamil language term to define a mason) were engaged fully. This work got over in a month or so and I moved to another”.Manimozhi’s narrative indicates labour exploitation of both women and men workers for the fulfillment of the construction project’s deadline. Longer working hours, wages in pittance, risk of occupational hazards, safety concerns and precarity are the factors that define the livelihood of women construction workers.

Selvi, Aged 42 years

Construction worker with 12 years of experience (Working in several parts of Chennai) says: “I come from a family of construction workers, my mother is a Sithaal(Tamil language term to define an informal woman construction worker), father is a Periyaal (Tamil language term to define an informal male construction worker) and my daughter is also a sithaal (Tamil language term to define an informal woman construction worker). I have worked hard for so many years and my daughter now work along with me on the site. She brings her 2-year-old daughter and I take care of her alongside sithaal work”. Selvi’s narrative illustrates how reproductive care responsibilities extend into the productive sphere for a woman construction worker. There is a significant dynamic of intergenerational transmission of gender inequity from one generation to another. Denial of basic

survival entitlements such as child care amenities at the construction work-site is a stark indicator of the disadvantaged social position of women construction workers in the construction sector's labour market.

Parameshwari, Aged 38 years

Construction worker with 4 years of experience (Working in several parts of Chennai) says: "I have not registered with TN-BOCW (Tamil Nadu Building and Construction Workers Welfare Board). We do not know how to register though at market stands they speak about it. The maistiri (Tamil language term to define a mason) has not helped us to get it done, though I want one"

Saraswathi, Aged 38 years

Construction worker with 10 years of experience (Worked in several parts of India namely Karur, Telangana, Bengaluru, Chennai) says: "I have worked in several parts from Chennai to Bengaluru. We have no protection. I gave birth and came back to work immediately with my infant to the site because this is my livelihood"

Senthamarai, Aged 40 years

Construction Worker with 7 years of Experience (Working in several parts of Chennai) says: "Being a daily wager and a migrant from Ulundurpet, Tamil Nadu my income is mostly spent in paying for accommodation, I am unable to save for my children's education. They study in Ulundurpet"

Labour Laws in India : A Critical Examination with specific reference to Women Construction Workers

The report submitted to the Labour Commission in 2002 specifies that there are multiplicity of labour laws in India seeking the need for restructuring of labour legislations. The negotiations for this progressive change began from 2004 to 2014. The recently institutionalized labour legislations are a result of the amalgamation of already existing labour legislations. These labour codes Industrial Relations Code, 2020, Code on Wages Act, 2019, Occupational Health, Safety and Working Conditions, 2020 and Social Security Code, 2020 is an outcome of years of negotiations to codify the existing labour laws from 2002. The Second Labour Commission recommended to consolidate 29 labour laws. Based on this recommendation, the Ministry of Labour and Employment introduced four bills in Lok Sabha. The four bills became enactments with the President's assent on 29th September 2020.

These codes facilitate to a larger extent the ease of doing business and trade though primarily it is posed that the consolidation of existing labour laws will aid worker welfare and safety. However, these codes can be viewed as a welcome step as it eliminates cumbersome procedures and introduces consolidated procedures such as single registration, safety monitoring and supervisory boards, stringent penalties for violations and provisioning of social security to workers. The following are the features of the labour codes critically examined from both positive and negative dimensions:

1. Grievance Redressal Committee instituted enables a workman to mandatorily approach the committee in case of any grievances under the social security code. This provides the scope for reducing the complexity of employer-employee relations and ensures a channel for routing employee grievances.
2. The Industrial Relations Code, 2020 has relaxed the implementation of the standing orders to organizations above 300 or more workers. There are major pitfalls in this labour code on industrial relations with the relaxation of standing orders for firms employing less than 300 workers that has the potential of creating a flexible and liberal 'hire and fire' climate. In this case, the scope for arbitrary removal of a worker by the employer widens. Women and migrant women workers with specific reference to the construction sector are further jeopardized with this move leading to their enhanced 'powerlessness' & 'voicelessness'. The lack of social security measures with an exclusive focus on the diverse needs of women workers in the framework of this labour reform is questionable. The essential point of argument here is the invisibility of 'women worker inclusive' policy in the labour reform codes with no recognition and focus on women workers' rights and social mobility. The vulnerability of a woman worker increases considerably in this context and the status of the women workers in the construction industry is further exacerbated due to the nature and scope of the construction work.
3. The Industrial Relations Code, 2020 has introduced the concept of 'sole negotiation union' to act as an intermediating body between the employer and employees. The mandate is to be a registered trade union. This is a progressive move towards worker rights as it has given a voice to elevate them from suppression and bourgeoisie control.
4. The term 'fixed term employment' provisions deploying a worker for a fixed period of time which is very ambiguous as no specifics pertaining to the industry, nature of recruitment is stated. The women workers in the construction sector have no recourse from this legislation primarily because their work involves high mobility

and mostly women construction workers are family laborers. Fixed term employment also poses precarious for the workers as it overrides their agency to participate in unions and gives autonomy for owners/capitalists in recruitment procedures involving hiring and firing.

5. The Code on Social Security, 2020 aims to universalise social security coverage by setting up the social security fund for unorganized workers with Employee State Insurance benefits.

6. The Code on Social Security, 2020 aims to offer wider coverage to all resident, inter-state migrant workers irrespective of their recruitment into the industry (whether sourced through a contractor or not), benefits of Public Distribution System, Employee Provident Fund, Employees State Insurance and availing the benefits out of the cess funds from the Building and Construction Workers fund are all transformative indicators in the struggle towards achieving equality for the working class. (Working People's Charter, 2020)

7. The Code on Social Security, 2020 fails to recognize the needs of building and construction workers with the major overhaul of the Building and Other Construction Workers Act, 1996 enactment. The legislation does not mandate the responsibility of the employer or contractor to register the workers in the Building and Other Construction Workers Act, 1996. The women construction workers are made an 'invisible population' despite their participation in the active construction sector labour market. This is because women construction workers mostly engage in construction work along with their husbands. Husbands become the de facto worker though legitimately the woman is the de jure worker. Hence, the non-registration of women construction workers in Building and Other Construction Workers Act, 1996 enactment due to lack of proper facilitating channels victimizes women construction workers in particular.

8. Funds for the migrant construction workers will be provided from the Construction Workers Cess Fund which is a promising move.

9. The provision to enable women workers to work at night under the Occupational, Safety, Health and Working Conditions Code 2020 may pose precarious for women construction workers due to lack of safety standards not being specified.

10. Maternity benefit provisions cannot be availed by women construction workers as they mostly work in residential establishments where the number of workers is less than 10. This limits their access to maternity benefits and other provisions such as creche and child care facilities.

Concluding Remarks

All the five narratives from the excerpts of the interviews conducted by the researchers illustrate the lack of legal entitlements for women construction workers' social well-being. The dimension of structural empowerment for women construction workers is questionable in the labour codes, shifting the discourse to the efficacy of the labour codes in the contemporary social context. The social pathos of women construction workers is manifested in their daily struggle for survival and livelihood; their daily woes begin from waiting for work opportunities in labour stands, haggling for enhancement of daily wages with employers, unregulated work routines and gender insensitive work dynamics that reflects masculinization of the construction workforce. The framework of the labour laws projects the spirit of capitalist ethics and reinforces patriarchal rigidity to the fullest, subverting the identities of women, migrants and women migrants.

Haggling for daily wages, standing in the labour stands for sourcing construction work for daily survival and livelihood, wages paid in pittance and invisibilization of the women construction workers' workforce due to lack of entitlements is an indicator of their deplorable work conditions. The labour laws suffer a major lacuna as it fails to meet the needs of the women construction workers' in particular.

Focussing on their vulnerabilities, women construction workers experience higher degrees of powerlessness with no legal recourse to their struggles. In addition to the critical examination of the labour laws, the following suggestions presented will aid the reorientation of the work-structures of women construction workers and mitigation of women construction workers' vulnerabilities.

1. Facilitate legal provisions for establishing a Women Construction Workers' Forum for sourcing construction jobs for women construction workers to mitigate the risk of harassment of women construction workers by masons and contractors. Women construction workers' work-structure is defined by overt dependence on masons or contractors for jobs and a higher degree of casualness that makes women construction workers in particular susceptible to different forms of vulnerabilities.

2. Restructure the Building and Construction Workers' Welfare Board with provisions for disbursements of funds during maternal and child care medical support, maternity benefit and subsidized health care for women construction workers.

3. Provision of Governmental assistance for registration in Building and Construction Workers' Welfare Boards for all.

4. Ensure provision of maternity benefit, accidental coverage and financial assistance for children of women construction workers.

5. Provision for housing facilities for resident women construction workers and safe authorized accommodation facilities for migrant women construction workers.

It is essential to reiterate the significance of labour laws as a framework for protection of the working class and not the political and business elites. In retrospect, the formulated labour laws fail to meet the needs, concerns of the working class and the working class poor women in particular. Promotion of social justice and achievement of social welfare continues to remain elusive for the women construction workers due to the

absolute lack of legal provisions that facilitate women construction workers' welfare, protection, social mobility and empowerment.

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