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SENDING COUNTRIES: SOUTH ASIA

Republic of India



A. COUNTRY CONTEXT

India is located in South Asia between the Arabian Sea and the Bay of Bengal, and it shares borders with Pakistan, China, Nepal, Bangladesh, and Myanmar. It is the world's largest and fastest-growing democracy and the second most populous country with a population of 1.21 billion. India is a highly diverse, multilingual, and multiethnic society. Forty-one percent of Indians speak Hindi, while 14 other official languages are spoken throughout the country. Hinduism is the most widely practiced religion at 80 percent, while Muslims constitute just over 13 percent, and Christians and Sikhs 2 percent each.¹ India is a lower-middle-income country² and ranks medium on the UNDP's latest Human Development Index.³ Gross national Income was placed at 1,410 US dollars per capita in 2011⁴, and 41 percent of the population lives below the international poverty line.⁵

Over the past decade India has experienced strong economic growth, owing largely to its service industry, which employs one-third of its work force and accounts for more than half of its output.⁶ However, the country continues to face challenges related to widespread poverty and inequality, inadequate physical and social infrastructure, limited non-agricultural employment opportunities, insufficient access to quality basic and higher education, and rural-to-urban migration.⁷ To address some of these issues the government has made

1 US Central Intelligence Agency, *The World Factbook 2012 – India* (2012). Available from: <https://www.cia.gov/library/publications/the-world-factbook/geos/id.html>

2 Available from: <http://data.worldbank.org/country/india>

3 Available from: <http://hdrstats.undp.org/en/countries/profiles/IND.html>

4 Available from: <http://data.worldbank.org/country/india>

5 Available from: <http://hdrstats.undp.org/en/indicators/38906.html>

6 *Ibid.*

7 Available from: http://www.indexmundi.com/india/economy_overview.html

significant investments in initiatives to bring basic services to the poor, including elementary education, basic health care, health insurance, rural roads, and rural connectivity. The government also recently launched the National Rural Livelihoods Mission, a community-based rural poverty reduction programme that aims to reach almost a quarter of India's population.⁸

Human Development Index (2011)	Rank 134, Medium human development
Total migrant stock (2010) ⁹	945,865
Immigrant share of population (2010) ¹⁰	0.9%
Female migrant stock as a percentage of all international migrants (2010) ¹¹	68.2%

India is a receiving country for millions of immigrants from neighbouring countries, including Bangladesh, Nepal, Pakistan and Sri Lanka, who have migrated due to political instability their own country, or in search of better livelihoods. A large proportion of these workers are undocumented and nearly half are women.¹² However, India is also a major labour-sending country and is the world's largest recipient of migrant worker remittances.¹³ According to the International Labour Organization (ILO), "migration flows from India since the 1990s have not only registered impressive growth in the traditional destinations like the United States of America, the United Kingdom, Canada and the Gulf countries, but also have diversified and expanded to newly emerging migrant destinations in continental Europe, Australasia, East Asia and South-East Asia."¹⁴

Thanks to its substantial educated English-speaking population, India has become a major exporter of information technology services and software workers to developed countries.¹⁵ However, the majority of workers migrating from India are unskilled and semi-skilled labourers who have taken jobs in various Gulf Corporation Council (GCC) countries.¹⁶ This report will focus primarily on India as a labour-sending country of these workers.

8 Available from: <http://www.worldbank.org/en/country/india/overview>

9 *Migration of Women Workers from South Asia to the Gulf*, p. 75, UN Women, 2012.

10 *Migration and Remittances Factbook*, World Bank, Available at: <http://siteresources.worldbank.org/INTPROSPECTS/Resources/334934-1199807908806/India.pdf>

11 Rakhee Timothy and SK Sasikumar, *Migration of Women Workers from South Asia to the Gulf*, UN Women South Asia and the V.V. Giri National Labour Institute, (New Delhi, 2012), p. 75. Available from: www.unwomensouthasia.org/2012/migration-of-women-workers-from-south-asia-to-the-gulf/

12 UN Women, *Asia Pacific and Arab States Regional programme on Empowering Women Migrant Workers in Asia* (webpage, n.d.). Available from: www.migration-unifem-apas.org/india/index.html

13 International Labour Organization Sub-regional Office for South Asia, *Managing International Labour Migration from India: Policies and Perspectives* (Geneva, October 2008), p. iii. Available from: http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new_delhi/documents/publication/wcms_123412.pdf

14 Ibid.

15 US Central Intelligence Agency, *The World Factbook 2012*

16 Available from: http://www.colomboprocess.org/index.php?option=com_content&view=article&id=53&Itemid=74

B. KEY GENDER AND HUMAN RIGHTS ISSUES

India has ratified six of the nine core international human rights treaties, including the CEDAW. It has signed but not ratified the Convention against Torture, and the Convention on Enforced Disappearance. It has neither signed nor ratified the Convention on the Protection of the Rights of All Migrant Workers. In its 2007 Concluding Observations, the CEDAW Committee noted that adherence to the major international human rights instruments “enhances the enjoyment by women of their human rights and fundamental freedoms in all aspects of life.” To that end, the Committee urged the Government to consider ratifying the treaties to which it is not yet a party, in particular the Convention on Migrant Workers (CMW).¹⁷

In 1993, India established the National Human Rights Commission (NHRC) to provide redress for human rights violations. The NHRC is mandated with reviewing laws for compliance with international human rights standards, and monitoring the implementation of treaties and instruments on human rights. One of the main focuses of the Commission has been to create a plan of action to prevent and combat human trafficking, placing special emphasis on women and children.¹⁸

Additionally, the Government has taken many positive steps specifically to promote and protect women’s human rights, including: amendment of the Constitution to ensure that one-third of the seats in local government are reserved for women; passage of legislation protecting women from sexual harassment in the workplace (including domestic workers); enactment of the Unorganized Worker Social Security Act (2008); drafting the Domestic Workers Welfare and Social Security Act (2010); proposal of an Equal Opportunity Commission Bill (2011); creation of a Working Group on Women’s Agency and Empowerment to oversee gender issues and ensure the fulfilment of women’s rights as part of the 2012-2017 national plan; 2009 amendments to the Criminal Procedure Code strengthening procedural safeguards with respect to crimes against women; and implementation of the Awareness Generation Project for Rural and Poor Women that supports campaigns to educate women about their rights and provide them with legal aid.¹⁹

Despite these efforts, persistent discrimination in education and in the workplace have resulted in lower literacy rates for women (65 percent) than men (82 percent), unemployment levels that are three times higher for young women than young men, and serious wage disparities in both formal and informal job sectors.²⁰ Rape, domestic violence, dowry-related deaths, honour killings, and sexual harassment also remain serious problems for women.²¹ Discrimination and poverty are major factors leading Indian women to migrate for work, both within India and

17 CEDAW Committee, *Concluding Observations of the Committee on the Elimination of Discrimination against Women – India* (CEDAW/C/IND/CO/3) (Thirty-seventh session, 2007). Available from: <http://www2.ohchr.org/english/bodies/cedaw/>

18 India, Ministry of Women and Child Development, *Draft Report to CEDAW Committee* (20 November 2011), para. 48. Available from: <http://wcd.nic.in/cedawdraft20nov2011.pdf>

19 Ibid.

20 Ibid.

21 US State Department, *Human Rights Report 2011 – India*, (2011), p. 1. Available from: www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper

abroad. However, during the migration process women are also vulnerable to a wide range of human rights abuses, including exploitation by recruitment firms, being forced to work long hours with no pay and few days off, and psychological, physical, and sexual abuse. Many women also become victims of trafficking and forced labour but have little access to justice mechanisms for seeking redress.²²

C. KEY STAKEHOLDERS

The Ministry of Overseas Indian Affairs (MOIA) is the central ministry for migration management in India. Its mission is to administer the Emigration Act of 1983, and facilitate safe and regular migration.

The National Human Rights Commission is an autonomous body mandated to: investigate allegations of human rights abuses; conduct legislative reviews; promote human rights awareness support efforts of NGOs focused on human rights; and recommend measures to the government for ways to improve the promotion and protection of human rights.

The Ministry of Women and Child Development (MWCD) is the national agency charged with promoting the social and economic empowerment of women through: cross-cutting policies and programmes; mainstreaming gender concerns; creating awareness about women's rights; and facilitating institutional and legislative support women's issues.

The National Commission for Women (NCW) is a statutory body mandated to: conduct gender-sensitive legislative reviews; make recommendations to the government regarding effective implementation of laws that promote and protect the rights of women; investigate complaints regarding women's deprivation of their rights; conduct studies on issues relevant to women; and advise in the planning process for socio-economic development of women.

The National Domestic Workers Movement has programmes in 17 states across India, and aims to legitimize both domestic work and the domestic worker at the state, national and international level. Initiatives include: efforts to organize domestic workers through training and capacity building; rights-awareness campaigns; provision of assistance to trafficked women and child domestic workers; and lobbying of government bodies and policy makers to improve justice for domestic workers.

Ernakulam Social Service Society is a human rights-based programme to raise awareness among rural women about their constitutional rights, promote legal literacy, enhance legal redress mechanisms, provide counseling, and support community watch programmes. It also aims to check migration by promoting homestead livelihood measures and improving the standard of living of the target population.

²² Megha Shree, "Victimization of Indian Female Migrant Workers in Gulf Countries", in *Proceedings of the First International Conference of South Asian Society of Criminology and Victimology (SASCV)*, K Jaishanker and N Ronel, eds. (Tirunelveli, India, 2010). Available from: http://www.academia.edu/990545/Victimization_of_Female_Indian_Migrant_Workers_in_Gulf_Countries

All-India Human Rights Association (AIHRA) is an NGO with representation in every state of India that investigates allegations of human rights abuses, provides legal services to victims, promotes human rights awareness, and advocates with the government.

The centre for Social Research is a non-governmental organization whose mission is to empower the women and girls of India, guarantee their fundamental rights, and increase understanding of social issues from a gender perspective.

Shakti Shalini is a Delhi-based NGO dedicated to advancing women's rights by fighting dowry-related crimes and domestic violence by raising public awareness and supporting a women's shelter for victims.

D. RATIFICATION RECORD

The following table illustrates India's ratification status of international treaties related to women migrant workers.

TREATIES	RATIFICATIONS
MWC	-
CEDAW	9 July 1993
ICCPR	10 Apr 1979
ICESCR	10 April 1979
ICERD	3 December 1968
CRC	11 December 1992
ILO 29 Forced or Compulsory Labour	30 November 1954
C87 Freedom of Association and Protection of the Right to Organize Convention 1948	-
ILO 97 Migration for Employment	-
ILO 98 Right to Organize and Collective Bargaining	-
ILO 105 Abolition of Forced Labour	18 May 2000
C100 Equal Remuneration Convention 1951	25 September 1958
ILO 111 Discrimination in Employment	3 June 1960
ILO 138 Minimum Age for Admission to Employment	-

ILO 143 Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers	-
ILO 181 private employment agencies	-
ILO 182 prohibition worst forms of child labour	-

E. COMPLIANCE WITH CEDAW ARTICLES

India ratified the CEDAW in 1993, but declared it would abide by articles 5(a) and 16(1) only “in conformity with its policy of non-interference in the personal affairs of any Community without its initiative and consent.” Additionally, the Government noted that with regard to article 16(2), while “it fully supports the principle of compulsory registration of marriages, it is not practical in a vast country like India with its variety of customs, religions and levels of literacy.” The Government also noted that it does not consider itself bound by paragraph 1 of article 29.

In its Concluding Observations for India, the CEDAW Committee expressed concern about the Government’s policy of non-interference in the personal laws of communities (based on religious and other faith basis), noting that it not only contradicts the overall spirit and aim of the Convention, but it also contradicts India’s Constitutional guarantees of equality and non-discrimination. It thus urged the government to withdraw its reservations to articles 5(a) and 16(1) and to “proactively initiate and encourage debate within the relevant communities on gender equality and the human rights of women and, in particular, work with and support women’s groups as members of these communities so as to (a) modify social and cultural patterns of conduct to achieve elimination of prejudices and practices based on stereotyped roles for men and women and (b) review and reform personal laws of different ethnic and religious groups to ensure de jure gender equality and compliance with the Convention”.²³

DISCRIMINATION

Discrimination in India starts at birth with cultural preferences for boys leading to selective abortions, which in 2011 resulted in only 914 girls born for every 1000 boys.²⁴ The CEDAW Committee expressed concern about the continuing deterioration in the ratio of females to males despite the fact that sex selection is prohibited by the Pre-conception and Prenatal Diagnostic Technique Act. The Committee urged the Government to take measures to effectively implement and monitor the Act, while ensuring safeguards are in place to prevent criminalization of women who are pressured into seeking sex-selective abortions.²⁵

23 CEDAW Committee, *Concluding Observations*.

24 UN Women, *UN Women in India (n.d.)*. Available from: www.unwomensouthasia.org/assets/unw_electronic.pdf

25 CEDAW Committee, *Concluding Observations 2007*, paras. 38-39.

The CEDAW Committee has commended India for efforts taken to eradicate discrimination against women, such as the Constitution's inclusion of the fundamental right to gender equality and non-discrimination and a specific enabling provision on affirmative action.²⁶ The Committee has also noted its appreciation for contributions made by the Supreme Court of India in this respect.²⁷ Some Supreme Court cases of particular note that have integrated CEDAW into domestic law include:²⁸

- *Masilamani Mudliar and Others v. The Idol Swaminathaswami Thirukloi and Others* (1996) – holding that “personal laws, derived from scriptures, conferring inferior status on women are anathemas to equality.”
- *Vishaka v. State of Rajasthan* (1997) – defining sexual harassment in the same way it is defined in the CEDAW Committee's General Recommendation 19, noting that, in the absence of domestic law “to check the evils of sexual harassment of working women at all work places, the contents of International Conventions and norms are significant for the purposes of interpretation of the guarantee of gender equality and the right to work with human dignity.”
- *Municipal Corporation of Delhi v. Female Workers (Muster Roll)* (2000) – requiring that the principles contained in article 11 of the CEDAW be read into the contract of service between the employer and women employees and thus entitling the women to all the benefits of the Maternity Benefit Act.
- *Vasantha v. Union of India* (2001) – striking down provisions of the Factories Act which prohibited women from night-shift work, and providing guidelines and welfare measures for women who work at night.

These decisions are examples of gender-sensitive practices in line with article 2(c) of the CEDAW, which obligates States parties to ensure through national tribunals and other public institutions the effective protection of women against any act of discrimination.

More recently, the Government has introduced legislation to further eliminate discrimination and promote the rights of women. For example, a new law providing social security to unorganized workers was enacted in 2008 that provides health and maternity benefits, death and disability compensation, and old age protection. The vast majority of women workers in India are employed in the informal and unorganized sector.²⁹ Thus, this law is a gender-sensitive good practice that recognizes their contribution to the economy by providing them with some of the same social security protections as employees in the formal sector, most of whom are men. Such legislation is in compliance with article 11(e) of the CEDAW, which obligates States parties to ensure women have the equal right “to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work.”

Additionally, a law on Protection of Women against Sexual Harassment at the Workplace (2010) was recently cleared by the Cabinet and covers every workplace in both the organized and unorganized sector. The law provides a comprehensive definition of sexual harassment,

26 CEDAW Committee, *Concluding Observations of the Committee on the Elimination of Discrimination against Women – India* (CEDAW/C/IND/1) (Twenty-second session, 2000). Available from: www2.ohchr.org/english/bodies/cedaw/

27 CEDAW Committee, *Concluding Observations 2000*.

28 India, Ministry of Women and Child Development, *Draft Report to CEDAW Committee* (20 November 2011), para. 38. Available from: <http://wcd.nic.in/cedawdraft20nov2011.pdf>

29 *Ibid.*, para. 85.

stating that no woman in the workplace shall be subjected to “sexually determined behaviour, physical contact, advances, sexually coloured remarks, showing pornography, sexual demand, request for sexual favour, or any other unwelcome conduct of a sexual nature whether verbal, textual, physical, graphic or electronic or by any other actions.” The law also places an obligation on the employer to prevent sexual harassment, to provide a mechanism for redress and to assist victims in filing criminal complaints with the local police.³⁰ A joint survey by UN Women and the NGO Jagori found that 66 percent of women had been sexually harassed between two and five times in 2010. Another survey conducted in the information technology and outsourcing industry found that 88 percent of women had faced sexual harassment in the workplace.³¹ Thus, the new law prohibiting sexual harassment is a much needed gender-sensitive good practice in line with article 11(f) of the CEDAW guaranteeing women the right to the protection of health and safety in working conditions.

Despite these initiatives, discrimination against women in employment remains rife and women are regularly paid less than men for the same job, promoted less frequently, and discriminated against in credit applications.³² Statistics show that around 25-30 percent of working women in rural, and 15-18 percent in urban areas participate in the formal labour market. Most other women workers are engaged in the informal or agricultural sectors. This is largely due to entrenched stereotypes about the roles of girls and women in society. In Concluding Observations, the CEDAW Committee called upon India to “strengthen its efforts to combat the widespread acceptance of stereotypical roles of men and women and recommended that gender issues and sensitivity training be made an integral and substantive component of all teacher training.”³³

POLICY MEASURES

Recent policies initiated by the government acknowledge that women are not just equal citizens, but also agents of economic and social growth. For example the National Plan for 2007-2010 described the necessity of interventions that: “(i) provide women with basic entitlements; (ii) address the reality of globalization and its impact on women by prioritizing economic empowerment; (iii) ensure an environment free from all forms of violence against women; (iv) ensure participation and adequate representation of women at the highest policy levels, particularly in Parliament and State assemblies; and (v) strengthen existing institutional mechanisms and create new ones for gender mainstreaming and effective policy implementation.” The new 2012-2017 plan builds on these policies, placing special emphasis on strengthening the role of women in governance and their rights to participation in improving public institutions and the delivery of public services.³⁴ These are examples of good gender-sensitive rights-based policies, however in order to comply with the CEDAW Committees recommendations, the Government must ensure that it regularly conducts impact assessments of policies in order to ensure that desired goals are being met.³⁵

30 Ibid, para. 91.

31 US State Department, *Human Rights Report 2011*, p. 41.

32 Ibid, p. 43.

33 CEDAW Committee, *Concluding Observations 2007*, para. 35.

34 India, *Draft Report to CEDAW Committee*, para. 91.

35 CEDAW Committee, *Concluding Observations 2007*, para. 15.

With respect to women who migrate abroad for work, the Emigration Act of 1983 is also an important policy measure. Section 22 of this Act requires all Indian citizens who wish to migrate for employment purposes to obtain emigration clearance from the Office of the Protector of Emigrants, Ministry of Overseas Indian Affairs, whose job it is to “examine the employment contracts to ensure that the terms and conditions are neither discriminatory nor exploitative and that the provisions for travel, wages and working and living conditions are in conformity with the prescribed norms.”³⁶ The policy also sets forth certain requirements for licensing of recruitment agencies, including setting limits on the amount of recruitment fees that may be charged to prospective workers.

Critics have noted however, that in many cases, employment contracts are not scrutinized well and there are few systems in place to monitor the working conditions of migrants in destination countries. The ILO has reported that “this is why unskilled and semi-skilled migrants, especially those working in Gulf countries, still continue to encounter problems like premature termination of job contracts, changing the clauses of contract to the disadvantage of workers, delay in payment of salaries, violation of minimum wage standards, freezing of fringe benefits and forced overtime at work without returns.” Additionally, according to the ILO, “provisions related to the ceiling fees are grossly flouted” and recruitment agencies generally charge as much as they can obtain.³⁷

Failure of sending countries to adequately conduct legal reviews regarding the validity of work contracts, and design effective monitoring systems to ensure protection of migrant women’s rights, is in contradiction to the CEDAW Committees General Recommendation 26, which urges governments to “formulate a gender-sensitive rights-based policy on the basis of equality and non-discrimination to regulate and administer all aspects and stages of migration, to facilitate access for women migrant workers to work opportunities abroad, promoting safe migration and ensure the protection of the rights of women migrant workers”.³⁸ UN Women has noted this problem and commented that, while several ministries in India, including those for labour, women, and home affairs, have mandates related to women migrant workers, there is little coordination among them on how best to protect women migrants’ human rights.

TRAFFICKING AND FORCED LABOUR

According to the US State Department’s 2012 Trafficking in Persons (TIP) Report, India is a source, destination, and transit country for women and children subjected to forced labour and sex trafficking. Ninety percent of all trafficking in India is internal and millions are subjected to forced labour, working in brick kilns, rice mills, agriculture, and embroidery factories. Physical and sexual violence, as well as debt, are used as weapons to coerce people into forced labour.³⁹

36 ILO Sub-regional Office for South Asia, *Managing International Labour Migration*, pp. 13-14.

37 *Ibid.*, pp. 14-15.

38 CEDAW Committee, *General recommendation No. 26 on women migrant workers*, (CEDAW/C/2009/WP.1/R) (UN Doc A/64/38 at 15, 2008) (Forty-second session, 2008). Available from: www2.ohchr.org/english/bodies/cedaw/docs/GR_26_on_women_migrant_workers_en.pdf.

39 US State Department, *Trafficking in Persons Report 2012 – India* (2012), p. 184. Available from: www.state.gov/j/tip/rls/tiprpt/2012/

The ILO's Committee of Experts on the Application of Conventions and Recommendations in its 2010 Individual Observation concerning Forced Labour Convention, 1930 (No. 29) for India noted that despite the Bonded Labour System (Abolition) Act, 1976, some governments create obstacles to the eradication of bonded labour and continue to deny its existence. The report also stated that because many state officials have a poor understanding of the legal definition of bonded labour, and fail to compile data on forced labour, the identification and release of bonded labourers has been extremely low.⁴⁰

Additionally, the TIP report notes that each year many Indians who voluntarily migrate abroad to work as domestic servants and low-skilled workers in the Middle East find themselves subjected to forced labour. This also occurs to a lesser extent to those migrating to South-East Asia, Europe, the United States, Africa and the Caribbean. Traffickers posing as legitimate labour-recruitment agencies, and high debts incurred to pay exorbitant recruitment fees are largely to blame.⁴¹

PROSECUTION

The Indian Penal Code prohibits forced labour, and the Immoral Traffic Prevention Act (ITPA) prohibits sex trafficking. Positive enforcement measures in recent years include: the establishment of 194 Anti Human Trafficking Units (AHTUs) in police departments throughout the country; a scorecard system with AHTUs that aims to improve the availability of data on trafficking; and a dedicated federal anti-trafficking unit, established in January 2012, staffed by police officers with nationwide investigative authority.⁴² These are good practices in line with article 6 of the CEDAW, which obligates governments to "take all appropriate measures, including legislation, to suppress all forms of traffic in women." In particular, the scorecard system complies with General Recommendation 26, which urges governments to conduct and support data collection and analysis to identify the problems and needs faced by women.⁴³

However, according to the TIP Report the laws related to forced labour and trafficking are unevenly enforced, and official complicity in trafficking offenses remains problematic. The report notes that "corrupt law enforcement officers reportedly continue to facilitate the movement of sex trafficking victims, protect suspected traffickers and brothel keepers from enforcement of the law, and receive bribes from sex-trafficking establishments and sexual services from victims." However, few officials are ever prosecuted.⁴⁴ Failure to hold officials accountable for participating in the exploitation of women violates article 2(b) and (c) of the CEDAW, which obligate States parties to adopt appropriate measures, "including sanctions

40 International Labour Organization, Committee of Experts on the Application of Conventions and Recommendations (CEACR), *Individual Observation concerning Forced Labour Convention, 1930 (No. 29) - India*, (Geneva, 2010). Available from: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_087808.pdf.

41 US State Department, *Trafficking in Persons Report 2012*, p. 184.

42 Ibid, p. 185.

43 CEDAW Committee, *General recommendation No. 26*, para. 23(b).

44 US State Department, *Trafficking in Persons Report 2012*, p. 185.

where appropriate, prohibiting all discrimination against women” and to “ensure that public authorities and institutions shall act in conformity with this obligation.”

PROTECTION

In 2009 the Ministry of Home Affairs (MHA) worked with the UN Office on Drugs and Crime (UNODC) to develop standard operating procedures to assist in identifying trafficking victims and refer them to protection services. Additionally, the government currently funds 100 NGO-operated hotlines to assist vulnerable people including trafficking victims, and operates shelters for victims of violence. Some Indian diplomatic missions in the Middle East also run temporary shelters and provide services including medical care and legal assistance to Indian migrant workers. These are good practices in line with General Recommendation 26 which states that diplomatic services should protect the rights of women migrant workers abroad by providing quality support services including medical care and counseling, legal aid, and shelter when needed.⁴⁵

The TIP report notes however, instances of trafficking victims being penalized for acts committed as a result of being trafficked, stating that “Section 8 of the ITPA (solicitation) and section 294 of the Indian Penal Code (IPC) (obscenity in public places) continued to be used to criminalize sex-trafficking victims.” Some victims have also been punished for being undocumented migrants or for document fraud.⁴⁶ To address this problem the Indian government is considering proposed amendments to the ITPA that will widen its scope, include a definition of trafficking in line with the UN Convention on Transnational Organised Crime (UNTOC), and provide better protection of the human rights of victims.⁴⁷

PREVENTION

Recent efforts to prevent trafficking have included public awareness-raising initiatives through radio talk shows and press conferences; safe emigration awareness campaigns; and bi-monthly ministerial meetings, including anti-trafficking officers from state governments to coordinate on trafficking prevention efforts.⁴⁸ Additionally, in 2007 the Government launched “Ujjawala” (A New Dawn of Light), a programme focused on the prevention of trafficking as well as the rescue, rehabilitation and re-integration of victims. In 2010-2011, 100 million rupees was budgeted for the programme and 51 new projects were initiated.⁴⁹ These efforts are good gender-sensitive practices in line with obligations under article 6 of the CEDAW to take all appropriate measures to suppress trafficking.

45 CEDAW Committee, *General recommendation No. 26*, para. 24(j).

46 US State Department, *Trafficking in Persons Report 2012*, p. 185.

47 ILO Sub-regional Office for South Asia, *Managing International Labour Migration*, pp. 42.

48 US State Department, *Trafficking in Persons Report 2012*, p. 186.

49 ILO Sub-regional Office for South Asia, *Managing International Labour Migration*, pp. 43.

EMPLOYMENT

Federal labour law in India sets health and safety standards and is applicable in all industries. The law mandates “a maximum eight-hour work day and 48-hour work week, as well as safe working conditions, which include adequate provisions for restrooms, canteens, medical facilities, ventilation, a minimum rest period of 30 minutes after every four hours of work, and premium pay for overtime. It does not mandate paid holidays and prohibits compulsory overtime.” However, laws related to wages, hours, and occupational health and safety do not apply to the informal sector, which includes domestic workers.⁵⁰

Domestic workers are an important part of the service sector because by helping with household duties, they allow other women to participate in the workforce. Many poor rural women migrate internally to cities within India in order to work as domestic help. According to India’s National Commission for Women, “in the last few decades there has been a tremendous growth in the demand for domestic workers which has led to trafficking and other forms of exploitation of millions of women and children of both sexes”. However, because domestic work is part of the informal employment sector these jobs are not covered by most of the provisions of the Labour Law. The National Commission for Women also notes that thousands of placement agencies have begun operating to meet this demand, some of which exploit and traffic women but who “remain largely outside the purview of any legislative control.”⁵¹

To remedy these problems, the National Commission for Women has drafted an act specifically for domestic workers, but it has yet to be passed by Parliament. The Domestic Workers Welfare and Security Act, 2010 provides for decent working conditions: a registered contract; specified working hours; paid holidays; protection against harassment; social security and access to benefits. It demands regulation of recruitment and placement agencies and defines specific roles for all government agencies, including: the labour department; police; state advisory boards; and district boards.⁵² Excluding occupations that are primarily filled by women from protection by the labour laws is discriminatory. This Act would, if enacted, counteract such an exclusion of domestic workers, and thus be a gender-sensitive rights-based practice in line with article 11 of the CEDAW which affords women equal rights to all the benefits and conditions of employment.

Women who leave the country for work are governed by the Emigration Act of 1983. A large percentage of these women also are engaged in domestic service in Gulf countries. Similarly to women domestic workers in India, many of these women suffer from poor living and working conditions and exploitation by middle men and agents. In order to protect their rights, the Government has made it mandatory for female migrants who have not completed matriculation and are below 30 years of age to get emigration clearance for the Government’s Protector of Emigrants (POE) prior to migration for overseas employment.⁵³ However, according to UN Women, “anecdotal evidence indicates that the provision not only restricts

50 US State Department, *Human Rights Report 2011*, p. 64.

51 India National Commission for Women, *Annual Report 2009-2010* (New Delhi, n.d.), p. 35. Available from: http://ncw.nic.in/AnnualReports/200910/Annual_Report_2009-10_English_Full.pdf

52 Ibid, Annex XII.

53 Rakhee Timothy and SK Sasikumar, *Migration of Women Workers from South Asia to the Gulf*, p. 74.

the rights of women to work but also promotes unregulated migration, where female workers end up in more vulnerable situations.”⁵⁴

On a positive note, however, the Government has recently introduced a compulsory insurance scheme for Indian migrant workers that is valid for the entire period of employment overseas, and has begun issuing smart cards to first-time migrant workers that contain important details related to their travel documents, work contracts, and insurance.⁵⁵ These are good rights-based practices in line with General Recommendation 26, which obligates governments to protect women migrants’ rights to health care and independent access to travel documents.⁵⁶

REGULATION OF EMPLOYMENT AGENCIES

Much of the focus of India’s Emigration Act 1983 is on regulating recruitment agencies. For example, it requires that in order to be licensed, a recruitment firm must demonstrate “financial soundness, trustworthiness, adequacy of premises, and experience in the field of handling manpower export”. Firms must also deposit a security bond ranging from 0.3 to 1 million rupees.⁵⁷ However, according to the ILO, “addressing problems encountered by migrants during the recruitment process, like overcharging and cheating by sub-agents, has taken a back seat.” Agents regularly charge migrants as much as possible, and engage in visa trading where they sell to the highest bidder. “More often than not, it is the poor migrants who consider migration as the only strategy for economic upliftment who gets trapped in such situations,” the ILO has reported.⁵⁸ Other problems noted by the ILO include delayed repatriation because bank guarantees that recruitment firms are required to pay are insufficient to cover the costs of repatriation, and inadequate pre-departure orientation.

The government’s failure to adequately regulate and monitor recruitment agencies results in women migrant workers being subjected to exploitation and abuse, debt bondage and trafficking, and is in violation of General Recommendation 26, which obligates governments to “design monitoring systems to ensure that recruiting agents and employment agencies respect the rights of all women migrant workers,” and “facilitate free or affordable gender- and rights-based pre-departure information and training programmes that raise prospective women migrant workers’ awareness of potential exploitation.”⁵⁹

Women and girls who migrate internally to work as domestic help within India suffer from similar problems. In major cities like Delhi, thousands of agencies operate illegally and without any oversight, which has led to many cases of abuse, trafficking, and forced labour. In a recent case, the High Court of Delhi addressed this problem, noting the lack of comprehensive legislation regulating placement agencies, and the need to better control recruitment of women and children to minimize exploitation as much as possible. To that end the Court

54 Ibid.

55 Ibid.

56 CEDAW Committee, *General recommendation No. 26*, paras. 24 (d) and (e).

57 ILO Sub-regional Office for South Asia, *Managing International Labour Migration*, p. 14.

58 Ibid, p. 15.

59 CEDAW Committee, *General recommendation No. 26*, paras. 24(b) & (c)(i).

issued guidelines for registering, regulating, monitoring and supervising the working of placement agencies that provide employment to women and minors as domestic help in Delhi (the minimum legal age for domestic service in India is 14). Specifically, the Court directed the Labour Department to:

- (a) Register all placement agencies within a finite period of time. Failure to register within that prescribed time should result in penal action;
- (b) All placement agencies located in Delhi must register, as well as any who place women and children in homes located in Delhi.
- (c) The registration information should require:
 - 1) Details of the agencies;
 - 2) Number of persons, who are employed through the agencies, their names, ages and their addresses;
 - 3) Details of salaries fixed for each person;
 - 4) Addresses of the employers;
 - 5) Period of employment;
 - 6) Nature of work;
 - 7) Details of the commissions received from the employers.
- (d) Both the Child Welfare Committee and the Delhi Commission for Women should have access to this information.⁶⁰

This decision by the Court represents a gender-sensitive good practice in line with article 6 of the CEDAW obligating States parties to take all appropriate measures to suppress all forms of trafficking in women. It also complies with General Recommendation 26 which urges government to provide a list of authentic, reliable recruitment agencies and design monitoring systems to ensure agencies respect the rights of all women migrant workers.⁶¹

MINIMUM AGE AND MINIMUM WAGE

Minimum Age

The Child Labour (Prohibition and Regulation) Act, 1986 prohibits the employment of children below the age of 14 years in occupations that are hazardous to the children's lives and health, a list of which is provided in the Act. Since the passage of the Act, the list of prohibited occupations has been expanded, once in 2006 and again in 2008, and now includes children working in the domestic sector as well as roadside eateries and motels.⁶² In its 2007 Concluding Observations, the CEDAW Committee noted its concern that "the employment of children – the majority of whom are girls – as domestic help in private homes where children are exposed to all forms of abuse, including sexual abuse" was not being targeted.⁶³ Thus,

60 *Bachpan Bachao vs Union of India; Shramjeevi Mahila Samiti vs State & others; and Kalpana Pandit v. State*, Decision of the High Court of Delhi at New Delhi, 24 December 2010. Available at: <http://nird.org/wp-content/uploads/2012/01/PLACEMENT-AGENCIES-JUDGEMENT.pdf>

61 CEDAW Committee, *General recommendation No. 26*, paras. 24(b)(ii) and (c)(i).

62 International Labour Organization, *National Legislation and Policies against Child Labour in India* (webpage, n.d.). Available from: www.ilo.org/legacy/english/regions/asro/newdelhi/ipecc/responses/india/national.htm

63 CEDAW Committee, *Concluding Observations 2007*, para. 48.

regulations that now prohibit children from being exploited as domestic workers constitute good gender-sensitive rights-based practices.

However, despite these regulations, many underaged girls continue to work as domestic servants throughout India. According to the National Domestic Workers Movement (NDWM), middle men seek out and recruit girls as young as five from impoverished rural families to work in houses in large cities such as Mumbai, Delhi, Lucknow, Chennai, and Hyderabad. Many of these girls “begin their working lives in debt to the employer who had paid an advance to the family member or to the recruiter.”⁶⁴ The government’s failure to effectively implement the ban on children younger than 14 being employed in domestic settings violates the Convention on the Rights of the Child, to which India is a party. Additionally, the Government’s failure to protect these children, the majority of whom are girls, violates the CEDAW’s principle of substantive equality which requires equality of results and real change for women and girls rather than merely de jure equality.⁶⁵

Additionally, as stated earlier, the law places restrictions on women below 30 years of age on emigrating for employment as domestic workers. Having a different minimum age for women migrant workers than for male migrant workers (who are allowed at a much younger age, which depends on the job sector) is prima facie discriminatory and contrary to article 1 of the CEDAW which defines discrimination as any distinction which impairs women’s enjoyment of their human rights and fundamental freedoms, in respect to the economic or any other field, on an equal basis with men. According to General Recommendation 26, States parties to the CEDAW are urged to lift discriminatory bans that restrict women’s migration based on age.⁶⁶

Minimum wage

State laws in India set minimum wages for most industries, however, the Government’s recently established Mahatma Gandhi National Rural Employment Guarantee programme (2010), guarantees a minimum wage of 100 rupees per day (2.00 dollars).⁶⁷ For those not covered by this scheme, the average wage across the country is 1.79 dollars per day.⁶⁸ Labour laws regulating minimum wages generally do not apply to those employed in the informal sector.⁶⁹ Low wages contribute to poverty, which is one of the main factors causing women to migrate for work. Women migrant workers, many of whom are engaged as domestic help, often find that pay in destination countries is equally insufficient to maintain a decent standard of living. To combat this problem, South Asian nations including Nepal, India, Sri Lanka and Bangladesh have recently come together to put pressure on receiving countries to pay a set minimum wage to migrant domestic workers abroad.⁷⁰ Subsequently, a minimum wage has been fixed by the Indian missions to Gulf countries in the range of 300-350 dollars per month.⁷¹ This

64 National Domestic Workers Movement, *Child Domestic Workers* (webpage, n.d.). Available from: http://ndwm.org/?page_id=239

65 International Women’s Rights Action Watch, *CEDAW Knowledge Resource*, (Kuala Lumpur, webpage, n.d.). Available from: www.iwraw-ap.org/convention/equality.htm

66 CEDAW Committee, *General recommendation No. 26*, para. 24(a).

67 US State Department, *Human Rights Report 2011*, p. 64.

68 UNDP, UNDP in India (webpage, n.d.). Available from: <http://www.undp.org/content/india/en/home/countryinfo/>

69 US State Department, *Human Rights Report 2011*, p. 64.

70 Yadav Raj Joshi, “South Asia Agrees on Minimum Wage for Housemaids”, *Himalayan Times*, Kathmandu, 26 June 2012. Available from: <http://www.thehimalayantimes.com/fullNews.php?headline=S+Asia+agrees+on+minimum+wage+for+housemaids&NewsID=337393>.

represents a good gender-sensitive policy in line with the CEDAW Committee's General Recommendation 26 which holds that women migrant workers are entitled to the protection of their human rights, including the right to be free from poverty and to an adequate standard of living.⁷²

BILATERAL AGREEMENTS

According to the ILO, "one of the major successes of the overseas employment policy of India in the recent years has been the signing of bilateral agreements/MOUs with major labour-receiving countries."⁷³ To date, India has entered into labour agreements with: Jordan and Qatar (1980s); UAE (December, 2006); Kuwait (April 2007); Oman (November 2008) and Malaysia (January 2009). An Additional Protocol to the existing Labour Agreement between India and Qatar was signed on 20 November 2007.⁷⁴ One of the main aims of these agreements is to ensure better protection and welfare for migrant workers. To that end, the MoUs generally contain the following: "(i) A declaration of mutual intent to enhance employment opportunities and for bilateral cooperation in protection and welfare of workers; (ii) The host country to take measures for protection and welfare of the workers in the organized sector; (iii) A statement of the broad procedure that the foreign employer shall follow to recruit Indian workers; (iv) The recruitment and terms of employment to be in conformity of the laws of both countries; and (v) A joint working group to be constituted to ensure implementation of the MoU and to meet regularly to find solutions to bilateral labour problems."⁷⁵

UN Women encourages the use of bilateral MoUs between countries of origin and countries of employment, as they provide effective government-to-government migration channels, set out methods of migration management to be jointly implemented, and guarantee women migrant workers coverage under the labour law.⁷⁶ The CEDAW Committee also requires States parties to the Convention to "enter into bilateral or regional agreements or memoranda of understanding protecting the rights of women migrant workers as elaborated in General Recommendation 26."⁷⁷

While it is generally recognized that India's bilateral agreements with receiving countries are a good first step in protecting the rights of migrant workers, advocates argue that in order to more effectively they must be "backed up by concrete initiatives in the areas of model contracts, workplace monitoring, dispute resolution mechanisms, mechanisms for access to justice, monitoring practices of recruitment agencies, and adequate labour inspections

71 Rakhee Timothy and SK Sasikumar, *Migration of Women Workers from South Asia to the Gulf*, p.75.

72 CEDAW Committee, *General Recommendation No. 26*, para. 6.

73 ILO Sub-regional Office for South Asia, *Managing International Labour Migration*, p. 20.

74 International Labour Organization, *Labour Migration in India, a Review of Issues, Policies and Practices* (Geneva, 2011). Available from: www.ilo.org/public/english/protection/migrant/download/imp/imp108.pdf, p.23. Available from: <http://www.ilo.org/public/english/protection/migrant/download/imp/imp108.pdf>

75 *Ibid*, p. 24.

76 UNIFEM, *Good Practices to Protect Women Migrant Workers, report from high-level government meeting of countries of employment (2005)*, p. 19. Available from: <http://www.unwomen-eseasia.org/projects/migrant/Docs/GdPracticesReportWebPubV1.pdf>

77 CEDAW Committee, *General Recommendation No. 26*, para. 27(a).

systems. While these may be harder to negotiate, they should nevertheless receive high priority if MoUs are to have operations value in protecting Indian migrant workers abroad”.⁷⁸

HEALTH

To protect workers in the unorganized employment sector, including domestic workers, the Government initiated the Rashtriya Swasthya Bima Yojna⁷⁹ (RSBY) programme in 2007, with the objective of providing cashless health insurance cover of 30,000 rupees per family, which includes a maternity package for normal and caesarean deliveries.⁸⁰ As the majority of women workers in India are employed in the unorganized sector, this represents a good gender-sensitive rights-based practice in line with article 12 of the CEDAW, which obligates States parties to take all appropriate measures to eliminate discrimination against women in health care and ensure equal access to health services.

In 2006, the Ministry of Overseas Indian Affairs (MOIA) introduced a compulsory insurance scheme called Pravasi Bharatiya Bima Yojana⁸¹ (PBBY) to cover emigrant workers. This insurance package covers any Indian who goes abroad for employment purposes after obtaining emigration clearance. The policy is valid for a minimum of two years or the actual period of employment, whichever is longer, and coverage includes: death benefits; emergency care; cashless hospitalization care; maternity benefits; and legal expenses related to employment.⁸² This insurance scheme for migrant workers also constitutes a good rights-based practice in line with article 12 of the CEDAW.

With respect to medical clearance for migration, India has a clear policy against mandatory HIV testing.⁸³ This is a good rights-based policy in line with General Recommendation 26, which cautions that all pre-departure HIV/AIDS testing or health examinations must be voluntary.

EQUALITY BEFORE THE LAW

Women’s Access to Justice

Article 39 A of India’s Constitution provides for free legal aid to the poor, and articles 14 and 22(1) make it obligatory for the State to promote justice on the basis of equal opportunity to all. The Legal Services Authorities Act, which came into force in 1995, established a nationwide

78 Migrant Forum in Asia, *Resources on Indian Labour Migration*, (Quezon City, Philippines, 24 February 2012). Available from: www.mfasia.org/india/429-resources-on-indian-labor-migration

79 National Health Insurance Scheme

80 India, Ministry of Women and Child Development, *Draft Report to CEDAW Committee* (20 November 2011), para. 240. Available from: <http://wcd.nic.in/cedawdraft20nov2011.pdf>

81 Overseas Indian Insurance Scheme

82 India, Ministry of Overseas Indian Affairs, *Salient Features of PBBY*, (New Delhi, 4 January 2008). Available from: http://moia.gov.in/pdf/p_b_b_ywef_%201_4_8.pdf

83 UNDP, “Grim Prospects for HIV Positive, At-Risk Migrants in South Asia”, 30 November 2010. Available from: <http://www.undp.org/content/undp/en/home/presscenter/pressreleases/2010/11/30/undp-report-grim-prospects-for-departed-hiv-positive-migrants-in-south-asia.html>

uniform network for providing free and competent legal services to the poor. In the CEDAW Committee's 2007 Concluding Observations it acknowledged India's efforts at making legal aid available to poor women, and made note of the National Legal Service Authority's efforts to enhance legal literacy for women and provide access to justice. However, the Committee expressed concern about the quality and scope of the free legal services provided and the limited access to legal services by women in rural and tribal areas. To remedy these problems the Committee urged the Government to "provide free legal services to poor and marginalized women in rural and tribal areas and monitor the quality and impact of such services in regard to ensuring women's access to justice."⁸⁴

Women who use recruitment services to migrate from rural to urban areas for work also face difficulty in accessing justice mechanisms and seeking redress for violations. The High Court of Delhi at in New Delhi has noted that in cases where women rights are violated by recruitment firms and/or employers, "existing laws do not provide an effective speedy remedy which ensures that women are able to seek recovery and wages, ensure their freedom of movement and ensure access to shelter options in cases of abuse."⁸⁵ The State's failure to ensure women adequate access to justice violates article 15 of the CEDAW, which requires States Parties to "accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity."

Women who are subjected to human rights and workplace violations while working abroad can file complaints with the Indian diplomatic missions, labour attachés or welfare officers, and receive assistance in settling employment disputes.⁸⁶ Migrant workers' complaints regarding Indian recruitment agencies can also be submitted to the Government's diplomatic mission in the country of employment, and will be forwarded to the Ministry of Overseas Indian Affairs. Subsequently "a show-cause notice under the Emigration Act, 1983 is issued to the registered Recruiting Agents against whom complaints are received and the Recruiting Agent is directed to settle/ resolve the complain in the first instance. If the Recruiting Agent fails to respond to the Show-Cause Notice or his reply is not satisfactory, his Registration Certificate is initially suspended for 30 days. If the complaint still remains unresolved, the Registration Certificate is suspended for a further indefinite period and action is initiated for cancellation of the Registration Certificate and forfeiture of Bank Guarantee, as warranted. In respect of complaints received against agents who are not registered with Protector General of Emigrant, Ministry of Overseas Indian Affairs, these are referred to the police authorities concerned for investigation and action."⁸⁷

Initiatives that hold recruitment employers and recruitment agencies accountable for respecting migrant workers rights, and provide mechanisms for redress, are good practices. However, the reality is that many Indian women who migrate abroad for employment have limited access to information, and often their movement is restricted. Most are engaged as domestic workers and thus are often isolated and forced to work long hours with no breaks or days off. Many do not speak the language of the host country. All of these factors make it difficult for them to file complaints with the diplomatic mission against their employer or recruitment agencies. The

84 CEDAW Committee, *Concluding Observations 2007*, paras. 18-19.

85 *Bachpan Bachao vs Union of India; other cases*

86 International Labour Organization, *Labour Migration in India*.

87 *Shakti Vahini Social Research Initiative, Action Against Recruiting Agents, (New Delhi, 12 August 2011)*. Available from: <http://equalityindia.wordpress.com/2011/08/12/action-against-recruiting-agents/>

CEDAW Committee commented on this problem in General Recommendation 26 where it noted that gender-insensitive environments in many destination countries result in limited mobility for women and limited access to relevant information about their rights and entitlements. Thus, the CEDAW Committee has recommended that Government policies take notice of the different sectors into which women migrate and ensure that legal remedies reflect this reality.⁸⁸

On a positive note, some Indian diplomatic missions have established shelters that provide temporary accommodation for runaway or rescued women migrant workers while they are in the process of seeking redress for their grievances. These shelters also serve as transit homes before the worker is repatriated back to India.⁸⁹ Additionally, for women who migrate for work within India and find themselves in difficult circumstances, the Ministry of Women and Child Development runs short-stay homes that provide shelter and services. Over 700 of these shelters are currently in operation throughout the country.⁹⁰ Provision of shelter services for women migrant workers abroad is a good, gender-sensitive, rights based practice in line with General Recommendation 26, which urges governments to ensure their diplomatic missions fulfil their role in protecting the rights of women migrant workers and provide shelter when needed.⁹¹ Additionally, provision of shelter to internal women migrants who have suffered from abuse and exploitation is in line with the Committee's General Recommendation 19 which requires States parties to provide appropriate protective and support services to victims of gender-based violence.⁹²

F. ANALYSIS AND CONCLUSIONS

The number of Indians migrating for work, both within the country as well as abroad, has expanded dramatically in recent years. Many of these migrant workers are women fleeing poverty and in search of better employment opportunities. Too many, however, fall victim to recruitment agents who exploit their situation, and are often plunged into further poverty and crippling debt, and can be subjected to physical and psychological abuse. The Government of India has acknowledged these problems and made significant efforts to better promote and protect the human rights of migrant women. Examples of gender-sensitive rights-based good practices related to women migrant workers include:

- Ratification of six of the nine core international human rights treaties, including the CEDAW.
- Establishment of the National Human Rights Commission (NHRC) to review laws to ensure their compliance with international human rights standards, and monitor the implementation of treaties and instruments on human rights.

88 CEDAW Committee, *General recommendation No. 26*, paras. 5 and 13.

89 India, Ministry of Women and Child Development, with the United Nations Office on Drugs and Crime, *India Country Report - To prevent and combat trafficking commercial and sexual exploitation of women and children*, World Congress III against sexual exploitation of children and adolescents (November 2008), p. 28. Available from: www.unodc.org/pdf/india/publications/India%20Country%20Report.pdf

90 India, *Combined Fourth and Fifth Periodic Reports of India to the CEDAW Committee* (New Delhi, 11 September 2012). Available from: www2.ohchr.org/english/bodies/cedaw/docs/AdvanceVersions/CEDAW-C-IND-4-5_en.pdf

91 CEDAW Committee, *General recommendation No. 26*, para. 24(j).

92 CEDAW Committee, *General recommendation No. 19 on violence against women*, (UN Doc A/47/38 at 1, 1993), (Eleventh session, 1992), para. 24(b). Available from: www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19

- Amendment of the Constitution to ensure that one-third of the seats in local government are reserved for women.
- Enactment of the Unorganized Worker Social Security Act (2008) that provides health and maternity benefits, death and disability compensation, and old age protection.
- The Domestic Workers Welfare and Social Security Act (2010) that provides a registered contract, specified working hours, paid holidays, protection against harassment, social security and access to benefits. It also demands regulation of recruitment and placement agencies and defines specific roles for all government agencies, including the labour department, police, state advisory boards and district boards.
- Proposal of an Equal Opportunity Commission Bill (2011).
- Creation of a Working Group on Women's Agency and Empowerment to oversee gender issues and ensure the fulfilment of women's rights as part of the 2012-2017 national plan.
- 2009 amendments to the Criminal Procedure Code strengthening procedural safeguards with respect to crimes against women.
- Implementation of the Awareness Generation Project for Rural and Poor Women that supports campaigns to educate women about their rights and provide them with legal aid.
- Constitutional provisions for the fundamental right to gender equality and non-discrimination, and a specific enabling provision on affirmative action.
- Supreme Court cases integrating CEDAW into domestic law.
- Law on Protection of Women Against Sexual Harassment at the Workplace, 2010, covering every workplace in both the organized and unorganized sector.
- National Plan 2007-2010 that: (i) provided women with basic entitlements; (ii) addressed the reality of globalization and its impact on women by prioritizing economic empowerment; (iii) ensured an environment free from all forms of violence against women; (iv) ensured participation and adequate representation of women at the highest policy levels, particularly in Parliament and State assemblies and (v) strengthened existing institutional mechanisms and create new ones for gender main-streaming and effective policy implementation.
- Emigration Act of 1983 that has provisions for examining employment contracts to ensure that the terms and conditions are neither discriminatory nor exploitative and that the provisions for travel, wages and working and living conditions are in conformity with the prescribed norms. The policy also sets certain requirements for licensing of recruitment agencies, including setting limits on the amount of recruitment fees that may be charged to prospective workers.
- Indian Penal Code prohibitions on forced labour.
- Immoral Traffic Prevention Act (ITPA), which prohibits sex trafficking.
- Establishment of Anti Human Trafficking Units (AHTUs) in police departments throughout the country.
- Scorecard system with AHTUs that aims to improve the availability of data on trafficking.
- Dedicated federal anti-trafficking unit, established in January 2012, staffed by police officers with nationwide investigative authority.
- Development of standard operating procedures to assist in identifying trafficking victims and refer them to protection services.
- Funding of 100 NGO-operated hotlines to assist vulnerable people including trafficking victims, and government-run shelters for victims of violence.
- Temporary shelters run by some Indian diplomatic missions in the Middle East to provide services including medical care and legal assistance to Indian migrant workers.

- Public awareness-raising initiatives through radio talk shows and press conferences and safe emigration awareness campaigns.
- Bi-monthly ministerial meetings, including anti-trafficking officers from state governments to coordinate on trafficking prevention efforts.
- Launching of “Ujjawala” (A New Dawn of Light), a programme focused on the prevention of trafficking as well as rescue, rehabilitation and re-integration of victims.
- Federal labour law sets health and safety standards and is applicable in all industries. The law mandates a maximum eight-hour work day and 48-hour work week, prohibits compulsory overtime, and requires safe working conditions, including adequate provisions for restrooms, canteens, medical facilities, ventilation, a minimum rest period of 30 minutes after every four hours of work, and premium pay for overtime.
- Distribution of smart cards to first-time migrant workers, containing important details related to their travel documents, work contracts, and insurance.
- Mahatma Gandhi National Rural Employment Guarantee programme (2010) guarantees a minimum wage of 100 rupees per day (2.00 dollars).
- A minimum wage has been fixed by the Indian missions to Gulf countries in the range of 300-350 dollars per month.
- Signing of bilateral agreements/MOUs with major labour-receiving countries.
- Initiation of the Rashtriya Swasthya Bima Yojna (RSBY) programme in 2007, with the objective of providing cashless health insurance cover of 30,000 rupees per family, which includes a maternity package for normal and caesarean deliveries
- Pravasi Bharatiya Bima Yojana (Overseas Indian Insurance Scheme) to cover emigrant workers, which includes: death benefits; emergency care; cashless hospitalization care; maternity benefits; and legal expenses related to employment.
- Policy against mandatory HIV testing.
- The Legal Services Authorities Act, establishing a nationwide uniform network for providing free and competent legal services to the poor.

Despite these positive legislative and policy measures, entrenched stereotypes about women’s roles in Indian society, combined with discrimination in education and employment, have led to lower levels of literacy for women than men, less participation in the workforce and serious wage disparities. These are all factors that contribute to women’s poverty and are push factors causing them to migrate for work. During the migration process women continue to be discriminated against, making them vulnerable to a wide range of human rights abuses. Thus the Government must continue to amend legislation and enact programmes that promote and protect the human rights of women migrant workers.

G. RECOMMENDATIONS

- Ratify the human rights treaties to which India is not yet a party, in particular the Convention on Migrant Workers.
- Withdraw reservations to articles 5(a) and 16(1) of the CEDAW.
- Work to modify social and cultural patterns of conduct to achieve elimination of prejudices and practices based on stereotyped roles for men and women.

- Review and reform personal laws of different ethnic and religious groups to ensure de jure gender equality and compliance with the Convention.
- Amend the Emigration Act 1983 to ensure that it is both gender-sensitive and rights-based, and ensures adequate protection of the human rights of all migrant workers, especially women migrant workers.
- Adopt a comprehensive gender-sensitive migration policy, which includes regulation of recruitment agencies, standard contracts and other protection rights for women migrant workers.
- Provide a list of authentic, reliable recruitment agencies and create a unified information system on available jobs abroad.
- Require recruitment agencies to participate in awareness-raising and training programmes and sensitize them on the rights of women migrant workers, the forms of sex- and gender-based discrimination, the exploitation women may experience and the responsibilities of agencies towards the women.
- Facilitate free or affordable gender- and rights-based pre-departure information and training programmes that raise prospective women migrant workers' awareness of potential exploitation.
- Ensure that contracts for women migrant workers are legally valid.
- Ensure that occupations dominated by women migrant workers, such as domestic work, are protected by labour laws, including wage and hour regulations, health and safety codes and leave regulations.
- Enact policies allowing for monitoring of health and safety conditions in the kinds of workplaces where migrant women dominate.
- Ensure that women migrant workers have the ability to access remedies when their rights are violated.
- Ensure effective gender-sensitive rights-based pre-departure information and training programmes that raise prospective women migrant workers' awareness of their rights.
- Regularly conduct impact assessments of policies in order to ensure that goals are being met.
- Amend sections 8 and 20 of the ITPA to provide better protection of women migrant workers' human rights.
- Repeal discriminatory bans on women under 30 migrating for employment as domestic workers.
- Undertake more effective efforts to ensure underaged girls in India are not employed as domestic servants.
- Convict and sentence government officials for corruption and collusion in trafficking-related offences, in particular corrupt law enforcement officers and politicians.
- Amend labour laws regulating minimum wages so that they apply to workers in the informal sector.
- Develop model contracts and ensure effectiveness of workplace monitoring, dispute resolution mechanisms, and mechanisms for access to justice, in order to better protect Indian migrant women abroad.
- Improve the quality and scope of the free legal services provided to poor women, increase their access to legal services and monitor the impact of such services in regard to ensuring women's access to justice.
- Enact laws to ensure that women are able to seek recovery and wages, ensure their freedom of movement and ensure access to shelter options in cases of abuse

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