

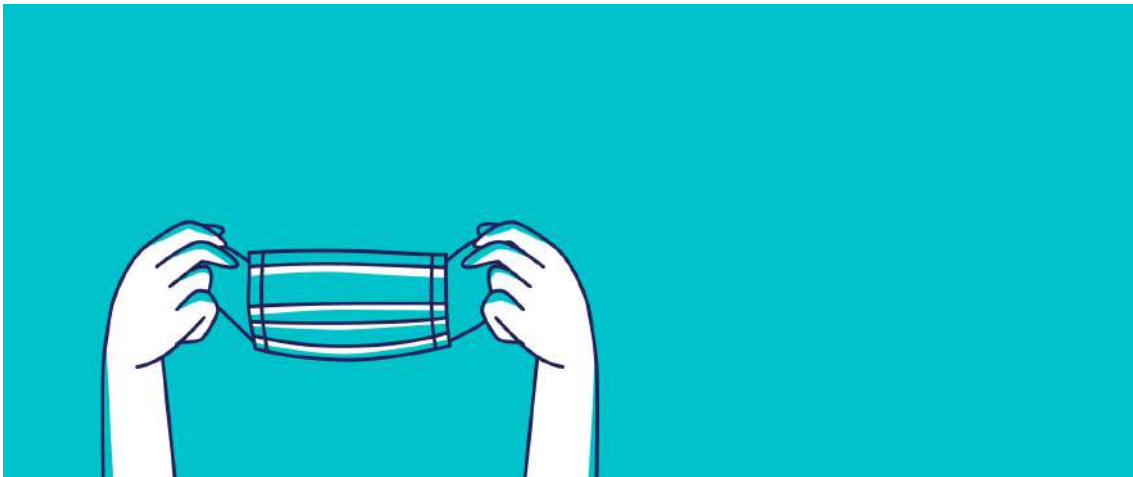
Violence in Times of COVID-19 Lack of Legal Protection for Women Informal Workers

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The views expressed here are personal and not necessarily that of the organisations they belong.



The present article is contextualised within the increasing cases of violence and harassment in the lives of women workers in the informal sector and deeply entrenched labour market discrimination in the wake of the COVID-19 pandemic. The article tries to analyse the impact of the pandemic particularly on the women workers in the informal sector through an examination of existing legal protection measures, access to social security and the issue of violence and harassment.

The ongoing COVID-19 pandemic has provided a new dimension for understanding informality with increasing vulnerability of women workers. Women constitute a significant part of the urban informal sector, and it is true that the informal sector as a whole does not get much of the protection under various labour legislations. The COVID-19 pandemic has exacerbated the problems of women informal workers who were already disadvantaged because of deeply entrenched discrimination of different kinds in the labour market. The pre-existing inequalities get further accentuated during the crisis including increasing instances of violence against women.

In this situation, there is a need to revisit the existing legislations in the context of serious violations of human rights as well as violence in domestic spaces faced during the lockdown, including sexual harassment at workplaces. The international labour standards and their response to the crisis can be evaluated as they can provide guidelines to countries to work towards curbing labour market discrimination for ensuring decent work, access to social security and promoting gender equality.

Increasing Violence

During this lockdown, most households did not allow their domestic maids to come to work, and a majority of them were denied monthly wages too. Most domestic workers in the cities live in slums with very poor living conditions. Loss of income because of lockdown causes these workers to live in constant fear of destitution and starvation.

Living conditions render them vulnerable to diseases, with a large number of people occupying a cramped space where it is not possible to maintain norms related to social distancing. Hygiene conditions are also very poor with little or no water supply. Washing hands and clothes at regular interval is not feasible under such conditions. They are not in a position to take recommended health precautions and adhere to safety measures, which are sometimes unaffordable. On one side, they have lost livelihoods, and on the other, living conditions and maintaining COVID-19 norms are making lives of women informal sector miserable. In addition, women bear the extra responsibility of domestic work within the household, gathering resources for the households when income sources have depleted.

What Does the Informal Economy Have for Women?

India has been a country of labour market complexities with massive informality and precarious employment. With around 90% of the workers in the informal sector, women occupy a prominent place within the informal sector. This location of women within the informal sector denies them access to social protection and coverage under labour legislation. The COVID-19 pandemic further aggravated their situation, pushing them to poverty with the loss of livelihoods. Women are generally engaged as self-employed workers, casual workers, domestic workers, piece-rated workers, home-based workers who do not have job contract, not eligible for paid leave or do not have access to social security. As per the Periodic Labour Force Survey (PLFS) 2017-18, 51.9% women were self-employed, 27% were categorised as casual labour while only 21% were shown as regular wage salaried. In urban areas, women are mostly shown as engaged in "other services" constitution 44.4%, followed by manufacturing (25.2%) and trade, and hotel and restaurant (13%). Within the regular wage salaried category, 66.8% females did not have regular job contracts in the wage salaried category, 50.4% women were not eligible for paid leave and 51.8% were not eligible for social security, as reported by the PLFS 2017-18. So the access to social security has been a major challenge for the informal sector women workers in the country.

The available legal provisions protecting some of the women workers in the informal sector are the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, The Unorganized Workers' Social Security Act, 2008. Though the 44 labour legislations in the country are now coded into four labour codes, many workers in the informal are left outside their purview due to the establishment-oriented definition that applies to 10 or more workers in certain establishments and the gaps in enforcement. There is no denying the fact that women within the informal economy are the worst sufferers, whether in wage employment or self-employment. The gender pay gap has remained an important area of concern. There are substantial number of instances where equal remuneration principles are violated like in beedi-making, brick manufacturing, construction activities, etc. For similar kind of work, women are usually less than what is paid to male workers. Women workers are thought to be dependent on active male workers, and their income is considered as secondary, at best supplementary in nature. Some employers, thus, find it absolutely fine paying women workers less than their male counterparts. The Equal Remuneration Act, 1976 is violated in such instances. In addition, women informal sectors workers do not even get benefits under the Maternity Benefit Act, 1961 as the said Act is applicable to units employing 10 workers or more. However, most of the informal sectors are employing less than 10 workers. Also, a substantial number of women informal sector workers are self-employed or in situations where employer-employee relations are mystified enough not to have an identifiable employer. In such cases, the applicability of maternity benefit does not arise. Thus, maternity benefit is something which is mostly applicable to organised sector women employees. Informal women workers do not have access to it. The terms of employment and conditions of service are discriminatory compared to that of the male workers.

Another gross violation concerning women informal sector workers is sexual harassment at the workplace. The matter is commonplace yet invisible because of the nature of work and their workplaces. Safe working environment is something that is missing at many informal workspaces. Cases of sexual abuse and harassment at the workplace has not received enough mainstream social attention or put to legal scrutiny. The incidences of sexual harassment of women workers in workplaces, such as construction sites, informal vendor markets, domestic workers at residences, agricultural fields and small-sized factories, go mostly unnoticed.

International Labour Standards

The recent International Labour Organization (ILO) brief on the COVID-19 crisis and the informal economy states that there will be an increase in relative poverty for informal workers and their families of more than 56% in lower and low-income countries due to lockdown and containment measures (ILO 2020). The current crisis has added to their miseries with reporting of cases of violence against them. The National Commission on Women had received 315 complaints on violence during the lockdown period and domestic

violence accounted for 47% of the complaints (ToI 2020). The economic distress, lack of social security nets, post-traumatic stress due to quarantine measures and return migration increases the risk of violence. The loss of livelihood of women workers in the informal sector alters the power relations (though there was a temporary escape for women earlier) and gives an added advantage to the perpetrators to indulge in acts of violence.

The new ILO Convention 190 concerning violence and harassment in the world of work adopted in June 2019 recognises that violence and harassment disproportionately impact women and girls and affects employment, productivity, health and safety. The convention has wide coverage applying to all sectors formal and informal both in rural and urban areas. The convention notes that domestic violence can affect employment, productivity and health and safety, and reaffirms that governments, employers and workers' organisations and labour market institutions can contribute to recognise, respond and address the impacts of domestic violence along with other measures (ILO 2019). It also reflects on psychological violence and empowers the labour inspectorates for effective implementation. The convention states

“ensure that labour inspectorates and other relevant authorities, as appropriate, are empowered to deal with violence and harassment in the world of work, including by issuing orders requiring measures with immediate executory force, and orders to stop work in cases of an imminent danger to life, health or safety, subject to any right of appeal to a judicial or administrative authority which may be provided by law.”

This provision empowers the labour inspectorate for effective enforcement.

Though India has enacted the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH), the reach of the legislation to women in the informal sector has been difficult. However, in the POSH Act, 2013, the role of the labour department is not outlined and hence the implementation of the legislation becomes weak.

POSH Act, 2013 and Challenges

The issue of implementation of the POSH Act, 2013 has remained one of the biggest challenges particularly for women workers in the informal sector. Their vulnerability and lack of agency restrict them from protesting or seeking remedies against cases of harassment. Unaware of legal recourses and fearing societal indignity, they just succumb to harassment by employers or fellow workmen. A 2012 poll conducted by Oxfam India and Social and Rural Research Institute (PARI) found that the most vulnerable women to workplace harassment were construction workers (29%), domestic workers (23%) and workers at small-scale manufacturing units (16%) (Oxfam 2018). Some of the key reasons reported by the women informal workers for not reporting cases of harassment were fear of

losing a job, absence of any complaints mechanism at the workplace, fear of getting stigmatised and lack of awareness about redressal mechanism.

Such sexual harassment at workplaces can be cited as one of the many reasons behind the declining female labour force participation rate in India during the last two decades. The Vishakha Guidelines and the subsequent POSH Act, 2013 were definitely significant steps towards addressing the issue of sexual harassment at the workplace. According to the act, a workplace covers both the organised and unorganised sectors, including self-employed workers. However, the implementation of provisions of the act is poor, especially in the case of informal workplaces.

The setting up of internal complaints committees (ICC) under the Act is mandatory in every organisation. For the informal sector, the act has mandated the constitution of local complaints committee (LCC) to investigate and redress complaints of sexual harassment in the unorganised sector. However, the government is still to constitute such LCCs in all sectors of the economy as the informal sector is scattered across space. Even where said LCCs were constituted, informal women workers have little knowledge about that. Absence of LCCs or lack of awareness among women workers about the remedial mechanism has denied women workers from seeking redressal under this act.

Towards Better Implementation

In a vast country like India, there is an immediate need to find out effective ways to deal with this very serious issue. The first and foremost task is to ensure the effective constitution of LCCs in all districts and their efficient functioning. For this purpose, district magistrates may conduct surveys of different workplaces and types of work that women in their districts are involved in and constitute LCCs accordingly. For different categories of workers, the task of managing LCCs needs to be given to registered organisations or representative bodies. For example, town vending committees should take responsibility for street vendors; residents welfare associations should take responsibility for domestic workers; construction workers welfare boards need to look after construction workers, panchayats may be empowered to take care of women farm workers, and so on.

The Ministry of Women and Child Development along with Ministry of Labour and Employment need to run a campaign in media including social media to create awareness among the masses in general and among women informal sector workers in particular. Radio and TV advertisements about the law can be widely publicised and circulated. Just as posters about ICCs are mandated to be put up in workplaces, LCCs must also be publicised in all possible areas usually frequented by women informal sector workers, including markets, neighbourhoods, construction sites, rural farms, etc. The role of the labour department is extremely essential for better enforcement of the legislation therefore there is a need to consider the involvement of the labour departments in line with ILO Convention 190 of 2019.

Further, the issue of violence and harassment at the workplace has taken a new dimension

altogether during the crisis, which calls upon governments to revisit the existing legislative mechanism and develop adequate response mechanisms for addressing new forms of harassment that affect workers well-being. The international labour standards can provide guidelines for informed policy action in this direction. There is also a need to develop gender-sensitive social protection policies for protecting the rights of women workers in the informal sector.

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