

Regulating Recruitment: Criminalization, Compounded Informality, and Workplace Violence

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Introduction

For more than two decades, social science research on the global economy has recognized the growth of non-standard employment—including part-time, temporary, contract, short-term,

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contingent,¹ and independent contracting work.² These fundamental changes in the nature of work unfold as globalization restructures local, national and regional economies, expands informal markets, precipitates internal and international migration, and drives the explosive expansion of global cities.³ These large scale transformations call for new legal paradigms to promote decent work, including for migrant workers, women workers, and other segments of the global labor force at heightened risk of workplace exploitation and violence.

Research on informal markets,⁴ sites where economic sectors evade government regulation, has highlighted the significance of hiring practices in the development of markets and determination of labor conditions.⁵ Legal regimes can play a significant role in promoting effective, ethical recruitment, and monitoring and enforcing these standards.⁶ How can new

¹ The term contingent work has been used to describe management practices of employing workers in response to immediate and direct demand for their services. This practice, routine in supply chain production contexts, is of particular significance in this study. See Kelleberg 2000.

² See e.g. Arnie L. Kalleberg, Nonstandard employment relations: part-time, temporary and contract work, ANNU. REV. SOCIOL. 23:341-65; V. Smith, New forms of work organization, ANNU. REV. SOCIOL. 23:315-39; KM Beard and JR Edwards, Employees at risk: contingent work and the psychological experience of contingent workers in TRENDS IN ORGANIZATIONAL BEHAVIOR (CL Cooper and DM Rousseau eds., 1995).

³ Abel Valenzuela, Jr., Day Labor Work, ANNU. REV. SOCIOL. 2003, 307, 315 (citing Saskia Sassen, The new labor demand in global cities in CITIES IN TRANSFORMATION (MP Smith ed., 1984); The informal economy: between new developments and old regulations, YALE LAW J. 103(8):2289-304; and Immigration and local labor markets in THE ECONOMIC SOCIOLOGY OF MIGRATION (Alejandro Portes ed., 1995)

⁴ This term was first introduced in Keith Hart, Informal income opportunities and urban employment in Ghaba, J. MOD. AFR. STUD. 11(1):61-89 but has subsequently been used with reference to a wide range of economies, reflecting political and economic realignment between employers and workers and a shift in the regulatory objectives of the state. See e.g. Manuel Castells and Alejandro Portes, World Underneath: The Origins, Dynamics and Effects of the Informal Economy in THE INFORMAL ECONOMY: STUDIES IN ADVANCED AND LESS DEVELOPED COUNTRIES (Alejandro Portes, Manuel Castells and Lauren Benton, ed., 1989). See Valenzuela, *supra* note 3 at 316 (defining informal work as “the paid production and sale of goods and services that are unregistered or hidden from the state for tax, social security and/or labor law purposes, but which are legal in all other respects”).

⁵ See e.g. Valenzuela, *supra* note 3, at 316

⁶ The potential for national law to facilitate operation of recruitment intermediaries while protecting workers using these services is set out in The International Labour Organization (ILO) Private

legal frameworks encourage recruitment practices that protect the interests of both workers and employers in informal markets? I answer this question using an analytic approach that first addresses two preliminary, interrelated questions: First, how do existing laws structure informal markets, recruitment pathways, and employment relationships? Second, how do workers in the informal sector seek first time employment and transition between jobs on a regular and ongoing basis?

Drawing together and elaborating upon interdisciplinary legal and social science scholarship on gendered labor migration, recruitment, and informal markets,⁷ in this article, I present the first empirical account⁸ of recruitment and placement practices among women labor migrants who seek employment in the Ready-Made Garment (RMG) production industry and the domestic work sector in the urban industrial and service hubs of Delhi and Mumbai in India. Grounded in qualitative field research conducted between August 2015 and November 2016, this paper

Employment Agencies Convention, 1997 (No. 181) and ILO Private Employment Agencies Recommendation, 1997 No. 188. These standards are discussed in detail in the Part VI of this article.

⁷ Literature on informal markets encompasses both studies of women who work in free trade zones and other industrial hubs where tax, social security, and labor law protections have been suspended to attract global finance capital to industrial production centers (See e.g. AJ Cravey, *WOMEN AND WORK IN MEXICO'S MAQUILADORAS* (1998), HI Safa, *THE MYTH OF THE MALE BREAD-WINNER: WOMEN AND INDUSTRIALIZATION IN THE CARIBBEAN* (1995), DL Wolf, *FACTORY DAUGHTERS: GENDER, HOUSEHOLD DYNAMICS, AND RURAL INDUSTRIALIZATION IN JAVA* (1992); and studies of work and work contexts outside the bounds of regulation (See e.g. L. Benería and M. Roldán, *THE CROSSROADS OF CLASS AND GENDER: INDUSTRIAL HOMEWORK, SUBCONTRACTING, AND HOUSEHOLD DYNAMICS IN MEXICO CITY* (1987), G. Clark, *ONIONS ARE MY HUSBAND: SURVIVAL AND ACCUMULATION BY WEST AFRICAN MARKET WOMEN* (1994), LJ Seligmann, ed. *WOMEN TRADERS IN CROSS-CULTURAL PERSPECTIVE: MEDIATING IDENTITIES, MARKETING WARES* (2001).

⁸ While recent legal scholarship has addressed the role of legal actors promoting fair recruitment, this article is the first in-depth legal treatment of recruitment practices grounded in extensive qualitative field research documenting recruitment pathways in both industrial and service contexts. in industrial reform and transnational governance to promote fair recruitment. See e.g. Bassina Farbenblum and Justine Nolan, *The Business of Migrant Worker Recruitment: Who has the Responsibility and Leverage to Protect Rights*, 52 *TEX. INT'L L.J.* 1.

presents the findings of 254 structured interviews with women garment and domestic workers, 63 focus group discussions, and investigation of recruitment practices across five states in India.⁹

This case selection provides a unique analytic vantage. First, it facilitates analysis of recruitment pathways in context of extremely high levels of informality. By, 2010, without accounting for informal sector workers within the public sector, 92 percent of all workers in India were effectively in informal sector employment—characterized by low wages, little job security, and no entitlement to state protection of their rights at work.¹⁰ Second, by considering recruitment and placement practices in both the Ready-Made Garment (RMG) production and domestic work sectors, it draws together insights from highly informal production and service industry contexts.¹¹ Third, while international migration has been given significant attention in sociological literature on immigrant labor market incorporation and gendered migration,¹²

⁹ This is the first publication of the findings from a study conducted by the Society for Labour and Development, a labor rights organization in Delhi, India on labor recruitment in India among migrant women workers in the garment and domestic work sector. This study was designed and coordinated by Shikha Silliman Bhattacharjee, JD. Studying findings were analyzed by Silliman Bhattacharjee and Falak Jalali. Field research was coordinated by Ananya Basu, Falak Jalali and Vaibhav Raj. Field research was conducted by a team of researchers, including Jallalludin Ansari, Ananya Basu, Indira Gartenberg, Amar Kharate, Degree Prasad Chouhan, Falak Jalali, Sumita Kerketta, Alok Kujur, Abhinandan Kumar, Hare Ram Mishra, Nafisha Naaz, Babli Paikra, Swati P. Tapase, Neha Verma and Surendra G. Waghmare.

¹⁰ Coen Kompier, Labour Markets: Exclusion from 'Decent Work' in INDIA EXCLUSION REPORT 2013-2014 (Harsh Mander and Gitanjali Prasad ed., 2014).

¹¹ While the garment sector includes both formal and informal employment, the domestic work sector, by contrast, is largely informal.

¹² Studies of transnational labor migration among women workers include M. Percot and S. Nair, Transcending boundaries: Indian nurses in internal and international migration in DYNAMICS OF INDIAN MIGRATION: HISTORICAL AND CURRENT PERSPECTIVES (Irudaya Rajan, V.J. Varghese and M.S. Jayakumar, eds. 2011); B. Anderson, DOING THE DIRTY WORK?: THE GLOBAL POLITICS OF DOMESTIC LABOUR (2000); N. Constable, MAID TO ORDER IN HONG KONG: AN ETHNOGRAPHY OF FILIPINA WORKERS (1997); MR Gamburd, THE KITCHEN SPOON'S HANDLE: TRANSNATIONALISM AND SRI LANKA'S MIGRANT HOUSEMAIDS (2000); P Hondagneu-Sotelo, GENDERED TRANSITIONS: MEXICAN EXPERIENCES OF IMMIGRATION AND DOMESTICA: IMMIGRANT WORKERS

recruitment and placement among internal labor migrants in India remains comparatively unexplored. Finally, by focusing on the experiences of women who migrate for employment in garment and domestic work, this study contributes to existing scholarship at the intersection of gender, labor, and globalization.¹³

I argue that regulatory approaches that selectively govern labor recruitment by criminalizing traffickers and rescuing victims misunderstand the critical functions many recruitment intermediaries play in matching workers to employers in highly informal labor contexts.¹⁴ Laws and policies that criminalize trafficking without protecting the legitimate functions of recruitment intermediaries provide incentives for recruitment actors to side-step regulation. At the nexus of informal workplaces and informal recruitment practices, migrant women workers are outside the boundaries of legal protection at all stages of the process of migration for employment—from recruitment to subsequent employment. Criminalization compounds informality and leaves workers exposed to labor exploitation and violence. Instead, this study, grounded in the experiences of migrant women workers, calls for regulatory approaches that promote transparent and accountable recruitment practices.

CLEANING AND CARING IN THE SHADOWS OF AFFLUENCE (2001); RS Parreñas, *SERVANTS OF GLOBLIZATION: WOMEN, MIGRATION AND DOMESTIC WORK* (2001).

¹³ Mary Beth Mills provides an overview of anthropological research in gender, labor, and globalization in *Gender and Inequality in the Global Labor Force*, *ANNU. REV. ANTHROPOL.* 32:41-62.

¹⁴ For instance, regulatory focus on private actors and violent states locates the cause of “modern-day slavery” and other forms of coercive labor in the individual deviant behavior of “criminal slaveholders” and recruiters who preys on the “weakness, gullibility, and deprivation” of the “enslaved” as a result of the “lawlessness in much of the developing world.” KEVIN BALES, *DISPOSABLE PEOPLE: NEW SLAVERY IN THE GLOBAL ECONOMY* xviii, 11, 29 (4th ed. 2012). The solutions prescribed by this unidimensional narrative include criminalizing traffickers and “slaveholders” and rescuing victims. See Janie A. Chuang, *Giving As Governance? Philanthrocapitalism and Modern-Day Slavery Abolitionism*, 62 *UCLA L. REV.* 1516, 1518 (2015).

I develop this argument in six parts. Part I of this paper sets out a detailed account of the labor market context of recruitment practices in India. This discussion is broken up into two sections: first, an analysis of the modes of labor market governance that have promoted non-standard employment since the 1980's; and second, an account of the current legal framework that regulates labor recruitment for internal migration.

Part II introduces the sectoral context of garment and domestic work in India. The discussion of these sectors provides insight into both production and service sectors in megacities in India.

Part III discusses women's labor migration within India, including factors precipitating migration, and the interplay of identity categories and vulnerability, including the role of stigma in compounding vulnerability. Together, Parts I, II, and III provide the specific context inhabited by the 254 women respondents from the garment and domestic work sector who were interviewed for this study. These three sections provide the rich detail on governance practices and workplace contexts in India that is essential for developing legal frameworks to govern recruitment practices that protect the interests of both workers and employers in informal markets.

Parts IV and V present empirical research findings at the core of this study. Part IV details four stages of primary data collection: exploratory research, purposive engagement with women workers through structured interviews and focus group discussions, and extended interviews, case studies, and interactive observation. Part V describes the segmentation of the labor supply chain in garment production and domestic work, where informal networks and recruitment intermediaries intersect with more formal labor recruiters.

My key findings indicate that no individual stakeholder—whether a labor recruiter, regulator or employer—can independently guarantee a fair outcome to workers who migrate for employment.¹⁵ Accordingly, the spectrum of coercive labor, including its most extreme forms, is not a function of individual bad actors alone, but is rather embedded in the global circulation of neoliberal governance forms—deregulation, flexible planning, and flexible employment—that strip workers of workplace and social protections.

Labor recruiters that operate within the garment and domestic work sectors in India use a wide range of practices and produce a range of outcomes. While some recruitment actors facilitate employment relationships that benefit both workers and employers, others facilitate placement in employment conditions that fall short of decent work standards. At a far end of the spectrum, exploitative recruitment practices coincide with indicators of forced labor.¹⁶

These findings provide an empirical anecdote to the disproportionate media coverage of high profile trafficking cases—especially those impacting women workers—that promotes selective understanding of the economic and social role of intermediaries in contexts of high informality. Extreme cases of violence and exploitation are wielded by “modern-day slavery abolitionists” and “anti-trafficking” advocates that call for laws that criminalize recruitment intermediaries

¹⁵ See also Igor Bosc, International Labour Organization Work in Freedom Programme, Operational parameters to assess fair recruitment practices (Draft Working Paper), June 2016, http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new_delhi/documents/publication/wcms_521713.pdf.

¹⁶ The ILO Indicators of Forced Labour include: abuse of vulnerability, deception, restriction of movement, isolation, physical and sexual violence, intimidation and threats, retention of identity documents, withholding of wages, debt bondage, abusive working and living conditions and excessive overtime (ILO 2012).

without recognizing the crucial role they play in helping workers to find jobs with reliable employers.¹⁷

After expanding the frame of reference on recruitment to include the legitimate market functions of recruitment intermediaries in Part V, Part VI of this article calls for regulatory approaches that promote transparent, accountable, and responsive recruitment practices.

These recommendations have significant implications for emerging international legal standards, including at the International Labour Organization (ILO)¹⁸, and in United Nations

¹⁷ See e.g. Bales, *supra* note 13. See *contra* Chuang, *supra* note 13 (providing a critical assessment of how modern day slavery abolitionists and “philanthrocapitalists” collapse a broad range of forced labor and trafficking practices under the umbrella of “modern-day slavery” and how philanthrocapitalists are reshaping policymaking arenas with national and global consequences); Filipe Calão, *Unfree Labor*, 45 ANNU. REV. ANTHROPOL. 453 (2016); Rhacel Salazar Parreñas, *ILLCIT FLIRTATIONS: LABOR, MIGRATION, AND SEX TRAFFICKING IN TOKYO* (2011); Jo Doeczema, *SEX SLAVES AND DISCOURSE MASTERS: THE CONSTRUCTION OF TRAFFICKING* (2010); Laura María Agustín, *SEX AT THE MARGINS: MIGRATION, LABOUR MARKETS AND THE RESCUE INDUSTRY* (2007); R. Kapur, *Cross-border Movements at the Law: Renegotiating the Boundaries of Difference* in *TRAFFICKING AND PROSTITUTION RECONSIDERED: NEW PERSPECTIVES ON MIGRATION, SEX WORK, AND HUMAN RIGHTS* (Kamala Kempadoo, Jyoti Sanghera, and Bandana Pattanaik eds., 2015)(for examples of how for more than a decade multidisciplinary literature and ethnographic social science research has destabilized simplified images of vulnerability and victimization grounded in ready-made media and policy representations of sexual slavery and trafficking; and warned that conceptual reliance on modern-day slavery may conceal important local and historical differences or overlook subtle dimensions of coercion that undermine decent work in the global economy).

¹⁸ The findings of this study, detailing recruitment practices for women garment workers in India bear relevance for ILO deliberations on decent work in global supply chains, initiated in June 2016 at the 105th Session of the International Labour Conference (for reports from the Committee on Decent work in global supply chains, see International Labour Conference, Committee reports and documents, <http://www.ilo.org/ilc/ILCSessions/105/committees/supply-chains/lang--en/index.htm> (accessed April 15, 2018); and deliberations on Violence against Women and Men in the World of Work scheduled for deliberation at the 107th Session of the International Labour Conference (for the Agenda of the 107th Session of the International Labour Conference, see International Labour Conference, Agenda 12 January 2017, http://www.ilo.org/ilc/ILCSessions/107/reports/reports-to-the-conference/WCMS_541403/lang--en/index.htm (accessed April 15 2018)).

initiatives to frame a new global compact on migration,¹⁹ and activate the 2017 New Urban Agenda.²⁰

Part I: Labor market context of recruitment practices in India

An estimated 15 million people in India enter the labor market each year.²¹ These workers enter markets where formal employment models are in rapid decline due to systematic erosion of labor standards and promotion of trade liberalization, international competition and privatization.²² Although India has seen relatively high economic growth in the past decade, employment opportunities in public enterprises, the formal private sector and agriculture have declined and very few jobs have been added—the majority of which fail to meet decent work standards. Due to economic, political and social governance practices, by 2010, without accounting for informal sector workers within the public sector, 92 percent of all workers in India were effectively in informal sector employment—characterized by low wages, little job security and no entitlement to state protection of their rights at work. The proportion of unorganized workers within the organized sector, moreover, rose to 51 percent in 2009-2010.²³

¹⁹ For information on the global compact for migration, an international agreement under negotiation in 2018 under the auspices of the United Nations, see Compact for migration, <https://refugeesmigrants.un.org/migration-compact> (April 15, 2018).

²⁰ From October 17-20, the UN Habitat III global summit on housing and sustainable urban development convened in Quito, Ecuador, to launch the New Urban Agenda — a global strategy around urbanization that will guide global strategy around urbanization for the next two decades. See New Urban Agenda, <http://habitat3.org/the-new-urban-agenda/>.

²¹ *India Needs to Create 15 million Jobs Annually: Pitroda*, THE TIMES OF INDIA (March 23, 2013), <http://archive.indianexpress.com/news/india-needs-to-create-15-million-jobs-annually-pitroda/1092411>.

²² See generally Shikha Silliman Bhattacharjee, INDIA'S LABOUR LAW CHANGES: TOWARDS ADVANCING PRINCIPLES OF RIGHTS, INCLUSION AND EMPLOYMENT SECURITY (2016).

²³ Coen Kompier, *Labour Markets: Exclusion from 'Decent Work'* in INDIA EXCLUSION REPORT 2013-2014 (Harsh Mander and Gitanjali Prasad ed., 2014).

As the Indian economy is transformed by economic, political and social governance practices that facilitate global labor extraction, India's megacities are manifestations of imbalanced economic growth within the country.²⁴ Workers who migrate for employment to hubs of industrial, service, and home-based employment rely upon formal and informal labor recruiters to facilitate employment. Related to the prevalence of unstable and flexible employment, workers seeking employment on a regular and ongoing basis create a significant role for labor recruiters in the Indian economy. Laws and policies that criminalize trafficking without protecting the legitimate functions of recruitment intermediaries, further entrench informality by providing incentives for recruitment actors to side-step regulation.

A. Labor market governance and promotion of non-standard work

Prompted by India's balance of payment crisis, beginning in the early 1980's and reaching its peak in early 1991, central and state government promotion of trade liberalization, international competition and privatization has relied on wage constraints and diminished bargaining power of unionized sectors.²⁵ With the global marketization of the economy, for many countries, national competitive advantage has come to include "cheap, skilled and controlled and disciplined lab[or]".²⁶

²⁴ Amitabh Kundu, Kundu, Urbanisation and Urban Governance: Search for a Perspective beyond Neo-Liberalism, 38 ECONOMIC AND POLITICAL WEEKLY 29, 3079-3087 (2003).

²⁵ KR Shyam Sundar, Industrial Relations in India- Working Towards a Possible Framework for the Future, Presentation at International Labour Organization Bureau for Workers' Activities (ACTRAV) & Centre for Informal Sector and Labour Studies, Jawaharlal Nehru University (JNU) National Trade Union Conference on Labour Law Reform, Industrial Relations and Industry Development (June 29, 2015).

²⁶ Kevin Hewison and Arne L. Kalleberg, Precarious Work and Flexibilization in South and Southeast Asia, 57 AMERICAN BEHAVIORAL SCIENTIST, No. 4, 395-402 (2013).

Central government promotion of non-standard work

India's central government has pursued legal and market reforms that systematically increase workforce flexibility, decrease the bargaining authority of trade unions and diminish the reach of India's state labor regulations and regulatory apparatus.²⁷ Measures to achieve labor flexibility have included increased use of contract labor, outsourcing and subcontracting.²⁸ As a result, workers are channeled into delivering flexible, labor intensive production activities at low cost and without wage, employment or social security.²⁹ The growth in the unorganized sector has been backed by judicial precedents stripping contract workers of labor protections and fueling unorganized employment within the organized sector.³⁰ Labor law reforms have

²⁷ T.S. Papola and Jesim Pais, Debate on Labour Market Reforms in India: A Case of Misplaced Focus, INDIAN J. OF LABOUR ECONOMICS, Vol. 50, No. 2.

²⁸ See e.g. Anamitra Roychowdhury, Recent Changes in Labour Laws and their implications for the working class, SANHATI (January 13, 2015), <http://sanhati.com/excerpted/12592/>; R. Nagaraj, Fall in Organised Manufacturing Employment: A Brief Note, ECONOMIC AND POLITICAL WEEKLY, July 24, 2004, at 3387-3390; R. Zaghera, Labour and India's Economic Reforms, in India in the Era of Economic Reforms (JD Sachs et. al. ed., 1999).

²⁹ Surendra Pratap, The Political Economy of Labour Law Reforms in India, Part I, SANHATI, (December 2, 2014), <http://sanhati.com/excerpted/12159/>.

³⁰ For instance, in 2001, in *Steel Authority of India Ltd. v. National Union Waterfront Workers*, the Supreme Court ruled that the Contract Labour Act, 1970 did not require mandatory absorption of contract workers as "permanent workers," even if they were employed for long periods at the same workplace but under different contractors. This judgment abolished entitlements protecting secure employment of contract workers, facilitating workplace flexibility. The Supreme Court further rolled back protection for casual and temporary workers by ruling that they could not seek regularization of their services, even after employment of more than 10 years, in *Secretary, State of Karnataka v. Umadevi*. In 2005, in *Haryana State Co-Op Land Development Bank v. Neelam*, a worker who was illegally terminated was not entitled to reinstatement. Such precedents stripped contract workers of labour protections and fueled unorganized employment within the organized sector. See *Steel Authority of India Ltd. v. National Union Waterfront Workers*, Appeal (civil) 4263 of 2006 (Supreme Court); *Secretary, State of Karnataka v. Umadevi*, Appeal (civil) 3595-3612 of 1999 (Supreme Court); *Haryana State Co-Op Land Development Bank v. Neelam*, Appeal (civil) 1672 of 2002 (Supreme Court).

simultaneously reduced the bargaining power of what remains of the organized industrial sector.³¹

As a result, casualization and contractualization of the Indian labor force is well underway in the manufacturing sector. In 2009-10, according to data from the Annual Survey of Industries, in factories employing more than 5,000 workers, almost half of the workers were employed through contractors and not directly by the establishments where they worked.³² According to National Sample Survey Organization (NSSO) data from 2011-2012, contract workers amounted to about 25 percent of all workers in establishments employing between 100 and 5,000 workers. More than 80 percent of all workers in the organized manufacturing sector had no written contracts or contracts that were valid for less than a year.³³ This trend toward casualization and contractualization has put a large section of the labor force outside the purview of India's labor protections.

Against this backdrop of economic liberalization, the most recent wave of labor law changes has been anticipated for more than a decade.³⁴ The current blueprint underlying India's current

³¹ 2001 amendments to the *Trade Unions Act, 1926* required unions to have at least 100 members or to represent at least 10 percent of the workforce in order to register under the Act—making the formation and registration of unions far more challenging than had previously been the case. *Trade Unions (Amendment) Act, 2001* (Act 31 of 2001)(section 5 inserted section 9A into the *Trade Unions Act, 1926*).

³² Atul Sood, Paaritosh Nath, and Sangeeta Ghosh, *Deregulating Capital, Regulating Labour: The Dynamics in the Manufacturing Sector in India*, 49 *ECONOMIC AND POLITICAL WEEKLY* NO. 26-27 (June 28, 2014).

³³ V. Sridhar, The curse of cheap labour: A society that systematically shortchanges its workforce will have to pay dearly, *FRONTLINE*, October 29, 2014, <http://www.frontline.in/cover-story/the-curse-of-cheap-labour/article6540760.ece?homepage=true&css=print>.

³⁴ The 2002 report of the Second National Commission on Labour provides a blueprint for the rapid “consolidation” of labour laws currently underway. See T.K. Rajalakshmi, *Loaded against labour: The report of the Second National Commission on Labour draws flak from across the political spectrum for its attempt to dilute labour rights citing a changed economic situation*, *FRONTLINE*, August 3-16, 2002,

labor law changes promotes deregulation, employer flexibility, and reduced protection for workers' and trade unions as critical elements of promoting business interests and attracting foreign investment. In 2014, the central government amended the *Labour Laws (Exemption from Filing Returns and Maintaining Registers by Certain Establishments) Act, 1988*, raising concerns among central trade unions that these Amendments will make a growing number of small establishments less accountable for upholding workers' rights.³⁵

The *Apprentices (Amendment) Act, 2014* increases flexibility by widening scope for engagement of apprentices under the Apprenticeship Act, 1961. The Amendment extends the scope for engagement of apprentices, increasing opportunities for on the job training. Relevant provisions include provisions for regulation of apprenticeships, time limits on apprenticeship periods and stipends for trainees. Under the *Apprentices (Amendment) Act, 2014*, employers are also, however, allowed to determine the weekly and daily hours of work for apprentices.

<http://www.frontline.in/static/html/fl1916/19160990.htm>. Support for labour law changes also continued under former Prime Minister Dr. Manmohan Singh who advocated labour law changes in order to make the process of doing business in India less intimidating, cumbersome and bureaucratic. J.S. Sodhi, *Labour Law Reform in India*, 50 INDIAN JOURNAL OF INDUSTRIAL RELATIONS 1, July 2014, 100-117, at 102 (citing Manmohan Singh at the ILC 40th Session).

³⁵ Under the *Labour Laws (Exemption from Filing Returns and Maintaining Registers by Certain Establishments) Amendment Act, 2014*, Schedule I, establishments employing up to 40 workers are now exempt from maintaining registers under the following Acts: *Payment of Wages Act, 1936; Weekly Holidays Act, 1942; Minimum Wages Act, 1948; Factories Act, 1948; Plantation Labour Act, 1951; Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955; Motor Transport Workers Act, 1961; Payment of Bonus Act, 1965; Beedi and Cigar Workers (Conditions of Employment) Act, 1966; Contract Labour (Regulation and Abolition) Act, 1970; Sales Promotion Employees (Conditions of Service) Act, 1976; Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979; Dock Workers (Safety, Health and Welfare) Act, 1986; Child Labour (Prohibition and Regulation) Act, 1986; Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996. Ramapriya Gopalakrishnan, HANDBOOK ON LABOUR REFORMS IN INDIA (2016).*

The Amendment Act also reduces penalties for contravening workers' rights under the Act. Where violations of workers' rights were previously punishable with up to six-months imprisonment, the Amendment Act, 2014 reduces penalties against employers for engaging apprentices for regular production work instead of direct or contract workers—a practice that is already prevalent across the country.³⁶

Legislation introduced by India's Ministry of Labour and Employment in 2015 includes the *Labour Code on Wages Bill, 2015*; the *Labour Code on Industrial Relations Bill, 2015*; the *Small Factories Bill (Regulation of Employment and Conditions of Service) Bill, 2014*; the *Factories (Amendment) Bill, 2014*. These proposed changes further dilute protective standards and dismantle accountability mechanisms, leaving workers increasingly vulnerable to a range of abuses including arbitrary and illegal wage deductions, challenges to freedom of association and collective bargaining, layoff and retrenchment.³⁷

³⁶ Apprentices (Amendment) Act, 2014, No. 29 of 2014, December 5, 2014. The Amendment extends the scope for engagement of apprentices by allowing employers to engage graduates without diplomas in engineering and technology as graduate technician apprentices; and engage migrant workers from other states as apprentices in addition to apprentices from the home states where businesses are located. The Amendment also affords greater flexibility to employers by allowing them to initiate training in an "optional trade" without waiting for central government notification of this trade; determine the weekly and daily hours of work for apprentices; and engage apprentices according to the minimum and maximum numbers prescribed by the central government. Finally, the Amendment reduces the penalties for contravening the Act from up to six months imprisonment to the mere requirement of answering a notice in writing and paying a fine. These amendments reduce penalties against employers for engaging apprentices for regular production work instead of direct or contract workers—a practice that is already prevalent across the country. Ramapriya Gopalakrishnan, *HANDBOOK ON LABOUR REFORMS IN INDIA* (2016).

³⁷ For detailed analysis of the proposed labour law changes, see Silliman Bhattacharjee, *supra* note 22 and Gopalakrishnan, *supra* note 36.

The *Child Labour (Prohibition and Regulation) Amendment Act, 2016* prohibits engagement of children below the age of 14 in all occupations and processes in order to protect the fundamental right to education under the *Right of Children to Free and Compulsory Education Act, 2009*. The Bill also, however, contains a provision allowing children of up to 14 years old to work after school hours to help the family in fields, home-based and forest work—opening the door for engaging children in unregulated and exploitative work.³⁸ The Act also sanctions employment of adolescents between 14 and 18 years old—except in mines, producing inflammable substances or explosives, and in hazardous processes as delineated by the *Factories Act, 1948*. This provision functions to legally sanction employment of adolescents in all others sectors.³⁹

State government promotion of non-standard work

In India, state governments have concurrent authority to enact labor laws and amend central labor laws. With the liberalization of the Indian economy, states have introduced significant changes in their labor policies and administration to deregulate industry and attract capital into their regions.⁴⁰ Over the last decade, in order to provide incentives for private investment, many state governments have modified labor laws in favor of employers operating in Special

³⁸ Shantha Sinha explains: “[The Act] does not seek to justify routine family work, but the work that millions of children render in home-based units of *beedi* rolling, *bindi* and bangle production, *agarbatti* and *papad* making, *zari* and embroidery work, packing and sticking lables, *chappal* making, handicrafts and the manufacturing of several other products. This is the work that requires the entire family to participate to meet the demands of contractors who supply them with the material and procure the finished product on a piece-rate basis. Such work is a form of hidden exploitation under unregulated labour conditions in which numerous children from deprived and marginalized communities are engaged”. Shantha Sinha, The New Law Banning Child Labour is No Ban at All, THE WIRE, July 22, 2016, <https://thewire.in/53128/unveiling-the-facade-of-the-child-labour-act/>.

³⁹ Sinha, *supra* note 38.

⁴⁰ Sundar 2015, *supra* note 25.

Economic Zones (SEZs)—duty-free enclaves deemed foreign territory for the purpose of trade operations, duties and tariffs under the *Special Economic Zones Act, 2005*. Reliable data on working conditions in SEZs is unavailable because employers are permitted to obtain reports from accredited agencies rather than completing mandatory labor inspections by government authorities. SEZs have also been declared “public utility services” in order to make strikes more difficult. As of October 2011, 583 SEZs had been formally approved but only 143 were operational. Direct employment in SEZs reached almost 400,000 workers in 2009.⁴¹

Since 2014, Rajasthan, Gujarat, Madhya Pradesh and some other states have undertaken significant labor law changes to further deregulate industry and attract investment. State amendments have increased the threshold number of workers in an establishment required for applicability of the *Factories Act, 1948* (Rajasthan); *Contract Labour (Regulation and Abolition) Act, 1970* (Rajasthan); Chapters V A and B of the *Industrial Disputes Act, 1947* related to lay off retrenchment and closure (Rajasthan, Andhra Pradesh); and the *Industrial Employment Standing Orders Act, 1961* (Madhya Pradesh). States have also diminished the likelihood for criminal sanctions against employers; promoted engagement of apprentices through economic incentives (Rajasthan); and initiated self-certification schemes exempting employers who self-report compliance from inspection under numerous central acts (Andhra Pradesh, Gujarat, Jharkhand, Madhya Pradesh, Rajasthan). Following this pattern, Andhra Pradesh, Haryana,

⁴¹ KR Shyam Sundar, Emerging Trends in Employment Relations in India, 45 INDIAN J. OF INDUS. REL., No. 4, 587 (2010).

Himachal Pradesh, Maharashtra, Uttar Pradesh and Telengana are also expected to introduce further labor law changes.⁴²

As a result of this systematic process of deregulation, workers receive limited if any social benefits and statutory entitlements. The proliferation of unprotected work has a far-reaching impact upon the nature of work and workplaces and the gender-based distribution of work. Consequences of precarious work include greater economic inequality, insecurity and instability among workers—including through routine dislocation as workers travel to follow transient employment opportunities.

B. Regulation of labor recruitment

In India's flexible, rapidly evolving employment markets, facilitating migration for employment has become highly profitable and recruitment intermediaries are assuming a crucial role.⁴³

In 2008, India's National Sample Survey Organisation (NSSO) estimated that nearly 30 percent of India's total population is comprised of internal migrants.⁴⁴ A 2009 study examining the economic contribution of internal circular migrants in major employment sectors in India revealed that they contribute 10 percent to the national GDP.⁴⁵ By 2011, India's Census reported that India's urban population growth exceeded rural population growth for the first

⁴² See Silliman Bhattacharjee, *supra* note 22.

⁴³ ILO-FICCI-MOIA Workshop on Strengthening Recruitment—Legislation and Structure, Delhi, August 26, 2015.

⁴⁴ Government of India, Ministry of Statistics and Programme Implementation, National Sample Survey Office (NSSO), Key Indicators of Employment and Unemployment in India, 2009-2010, NSS 66th Round (2011).

⁴⁵ Priya Deshingkar and Shaheen Akter, Migration and Human Development, United Nations Development Program, Human Development Research Paper, 2009/13, http://hdr.undp.org/en/reports/global/hdr2009/papers/HDRP_2009_13.pdf.

time since independence.⁴⁶ Due to shortcomings in accounting for internal migrants in the official data for destination areas, however, these figures are likely to be gross underestimates.⁴⁷

Although a wide range of labor recruiters work in India, catering to distinct labor market needs, India lacks a well-defined national labor law governing labor recruiters. Recruiting agencies that engage in placement of internal migrants within India are, however, governed by legal standards that are not specific to labor recruiters. For instance, contractors and employers who hire through contractors are subject to the *Contract Labour (Abolition and Regulation) Act, 1970*,⁴⁸ the *Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979*⁴⁹ and central and state laws criminalizing human trafficking.⁵⁰

In *Bachpan Bachao v. Union of India* (2009), the Delhi High Court asked placement agencies in Delhi to register under the Shops and Establishments Act.⁵¹ The Ministry of Labour and Employment Task Force on Domestic Workers (2009-2011) joined the call for measures to

⁴⁶ High Powered Expert Committee for Estimating the Investment Requirements for Urban Infrastructure Services (HPEC), REPORT ON INDIAN URBAN INFRASTRUCTURE AND SERVICES (2011), <http://icrier.org/pdf/FinalReport-hpec.pdf>; S. Irudaya Rajan, INTERNAL MIGRATION AND YOUTH IN INDIA: MAIN FEATURES, TRENDS AND EMERGING CHALLENGES (2013).

⁴⁷ United Nations Educational, Scientific and Cultural Organization (UNESCO), SOCIAL INCLUSION OF INTERNAL MIGRANTS IN INDIA (2013).

⁴⁸ Contract Labour (Regulation and Abolition) Act, 1970, No. 37 of 1970 (5 September 1970).

⁴⁹ Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, no. 30 of 1979 (11 June 1979).

⁵⁰ Immoral Traffic Prevention Act, 1956, No. 104 of 1956 (30 December 1956).

⁵¹ *Bachpan Bachao v. Union of India*, WP (Crl.) No. 82 of 2009 (A.K. Sikri and Ajit Bharihoke, JJ.) (High Court of Delhi). This judgment was upheld by the Supreme Court in *Bachpan Bachao Andolan v. Union of India*, (2011) 5 SCC 1.

regulate recruitment and placement agencies and issue guidelines to states/union territories on operation of private placement agencies, including provisions for registering labour recruiters.⁵²

On September 25, 2014, the Delhi Labour Department issued a notification in compliance with the Delhi High Court ruling in *Bachpan Bacho Andolan v. Union of India*, calling for registration and licensing of agencies, written employment engagements and passbooks for domestic workers and assigning oversight and adjudication to the Delhi Commission for Woman and the Child Welfare Committee.

Despite these calls for registration, there is no reliable government data on the prevalence of labor recruiters focused on internal migration in India and the types of services provided by them. Thus far, only Delhi and Chhattisgarh require registration of labor recruiters who facilitate employment within the country; and even when it is required, registration is low. For instance, of 100 labor recruiters in Delhi and the NCR surveyed in a 2013 National Labor Institute study, 67 percent of labor recruiters claimed to be registered but only 3 percent had registration numbers. The remaining 33 percent of labor recruiters reported that they were not registered.⁵³

Contract Labor (Abolition and Regulation) Act, 1970

⁵² Government of India, Ministry of Labour and Employment, FINAL REPORT OF THE TASK FORCE ON DOMESTIC WORKERS: REALISING DECENT WORK (2011), http://www.nirmana.org/pdf/national_policy_on_domestic_work_2011.pdf.

⁵³ Elina Samantroy, ILO CONVENTION 181: ISSUES AND CHALLENGES IN THE CONTEXT OF PRIVATE PLACEMENT AGENCIES IN INDIA, NLI Research Studies Series, No. 1009/2013 (2013).

Contract laborers are protected by the *Contract Labour (Abolition and Regulation) Act, 1970*.⁵⁴

Paragraph 2(b) of the Act defines contract labor as a worker who is employed in connection with the work of an establishment, whether the worker is hired by or through a contractor, with or without knowledge of the principal employer. Accordingly, contractors who function as labor recruiters by engaging in recruitment and placement can be regulated under the Contract Labour Act—including through registration and licensing. The Act applies to any establishment in which 20 or more workers are employed on a contract basis and to all contractors who employ more than 20 workers on any given day. Any principal employer or contractor to whom the Act applies, is required to register their establishment in the manner prescribed.

The Act protects the rights of contract workers, including minimum wage protections, entitlements to social security benefits such as provident fund and medical facilities and decent living conditions—including safe drinking water, canteen facilities and first aid facilities. While it is the primary responsibility of contractors to provide these facilities, principal employers are required to assign an authorized representative to oversee disbursement of wages. Finally, however, a principal employer is liable for failure to provide timely wages or benefits by the contractor. Labour Department field officers are tasked with conducting regular inspections to detect violations of the provisions of the Act.

These provisions, however, are difficult to enforce. Among other challenges, it is often difficult to identify workers through a contractor. Contractors may not maintain appropriate registers or use *badli* workers [temporary workers holding a permanent post] without putting their names

⁵⁴ Contract Labour (Regulation and Abolition) Act, 1970, No. 37 of 1970 (5 September 1970).

on the books. Workers have difficulty establishing claims for redress in these contexts where it is difficult to establish a consistent employer-employee relationship with a single contractor—especially when they are routinely recruited and placed by independent contractors.⁵⁵

Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979

The Inter-State Migrant Workmen's Act⁵⁶ applies to every establishment in which five or more interstate workers are employed and to every contractor who engages five or more interstate migrant workers. Under the Act, establishments and contractors are required to register with the Deputy Labour Commissioner, maintain registers and records of particulars of migrant workers employed, the nature of work performed by these workers and their wage rate. Under the Inter-State Migrant Workmen's Act, no recruitment can take place for the purpose of employing workers in another state without a proper license. However, this provision is neither followed nor enforced by home and destination states, generally.

Significant limitations of the Act in regulating the activities of labor recruiters include exclusion of domestic workers from protection under the Act since employer homes do not fall under the definition of establishment under the Act and it is rare for five or more migrant domestic workers to work in a single home.⁵⁷

Laws criminalizing human trafficking

⁵⁵ Interview with Ashim Roy, Vice President New Trade Union Initiative (NTUI), New Delhi, India (Aug. 17, 2016).

⁵⁶ Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, no. 30 of 1979 (11 June 1979).

⁵⁷ Roy, *supra* note 55.

India's Immoral Traffic Prevention Act, 1956⁵⁸ aims to combat trafficking and child sexual abuse. The Act includes prohibitions on keeping a brothel; living off the earnings of prostitution—including for a child who reaches the age of majority and lives with a parent sex worker; procuring, inducing or taking a person for prostitution; and soliciting. In context of the stigma associated with sex work in India and much of the world, these prohibitions have significant consequences for sex workers, whether they entered the profession voluntarily or involuntarily.

Section 370 of the recently enacted Criminal Law (Amendment) Act, 2013 uses the same definition of trafficking as the United Nations Palermo Protocol. The provision on trafficking under the Indian Penal Code can be used to prosecute traffickers in a range of contexts beyond trafficking for sexual exploitation, including exploitation in brick kilns, rice mills, farms, embroidery factories, mines, stone quarries, homes and carpet factories. Despite these provisions, however, disproportionate emphasis on trafficking for sexual exploitation at the level of enforcement deprioritize forced labor.

In 2014, Chhattisgarh enacted the Private Placement Agencies (Regulation) Act, 2013 (hereinafter, Chhattisgarh Act)—the first state-level legislation to regulate labor recruiters.⁵⁹ According to NK Aswal, then Principal Secretary of the Chhattisgarh Home Department, the act aims to control human trafficking. The Chhattisgarh Act calls for licensing of all private placement agencies (Chapter III), requires registration of all domestic workers placed in employment, prohibits fees to workers, and outlaws placing any workers who are under 18

⁵⁸ Immoral Traffic Prevention Act, 1956, No. 104 of 1956 (30 December 1956).

⁵⁹ Chhattisgarh Private Placement Agencies (Regulation) Act, 2013, No. 23 of 2013.

years old (Chapter IV). Violation of the act is cognizable and non-bailable (Chapter VI), and carries a prison term of seven years, or a fine of one lakh rupees (USD 1,540)(Chapter V).

In response to widespread media coverage of trafficking from the state of Jharkhand, the Jharkhand Private Placement Agencies and Domestic Workers (Regulation) Act, 2016 (hereinafter, Jharkhand Act) was passed by the Jharkhand Assembly in December 2016. Like the Chhattisgarh Act, the Jharkhand Act calls for the registration of all private placement agencies (Section 4), requires registration of all domestic workers placed in employment, prohibits fees to workers, outlaws placing any workers who are under 18 years old, and punishes violation of the Act with a prison term of one year or a fine of up to rupees 20,000 (USD 308).

The laws and policies discussed in this section reflect a selective understanding of the economic and social role of intermediaries in contexts of high informality. Due to the disproportionately high profile of abusive recruitment practices, central and state-level legislation prescribe criminal sanctions for recruitment intermediaries, but do not provide incentives for registration. Laws and policies that criminalize trafficking without protecting the legitimate functions of recruitment intermediaries further entrench informality by providing incentives for recruitment actors to side-step regulation.

Part II: Sectoral context of recruitment practices in Ready-Made Garment and Domestic Sector (India)

The significant distinctions in the structure of the Ready- Made Garment (RMG) production industry and the domestic work sector facilitate understanding of a broad spectrum of labor recruitment practices.

A. Garment production in India

The Indian export garment industry has emerged as one of the leading industrial segments in the Indian economy since the adoption of liberalized economic policies beginning with the economic reforms of 1991. In 2013, textiles and clothing contributed 4% to the gross domestic product. Export earnings of the apparel industry alone were valued at USD 15.7 billion in 2014 and combined textile and apparel export earnings were valued at USD 40 billion. In 2014, the Indian textile and garment industry employed 45 million workers. Despite the significant segment of Indian workers employed in the garment industry, national level data on economic and social profile of the garment workforce remains thin.⁶⁰

India's National Commission for Enterprises in the Unorganized Sector (NCEUS) recognized garment workers as "informal workers in the formal sector".⁶¹ This designation appropriately accounts for the range of informal sector roles garment workers fill, including home-based work, daily wage work, and contract labor in small production units. Within the textile industry, this trend has been most apparent in the Ready-Made Garment (RMG) industry—a leading destination for outsourcing by multinational enterprises for the past two decades.⁶²

⁶⁰ Shikha Silliman Bhattacharjee, *PRECARIOUS WORK IN THE H&M GLOBAL VALUE CHAIN* (2016).

⁶¹ National Commission for Enterprises in the Unorganised Sector (NCEUS), *THE CHALLENGE OF EMPLOYMENT IN INDIA: AN INFORMAL ECONOMY PERSPECTIVE* (2009), [http://nceus.nic.in/The_Challenge_of_Employment_in_India_\(Vol.%2011\).pdf](http://nceus.nic.in/The_Challenge_of_Employment_in_India_(Vol.%2011).pdf).

⁶² Susana Barria, *NATIONAL PEOPLE'S TRIBUNALS ON LIVING WAGE FOR GARMENT WORKERS IN ASIA* (2014).

Today, the major hubs of garment manufacturing are located in the industrial clusters of the Delhi-National Capital Region (NCR); Bangalore, Karnataka; Ludhiana, Punjab; Mumbai, Maharashtra; Jaipur, Rajasthan; Kolkata, West Bengal; and Tirupur, Tamil Nadu. The gender-based composition of the RMG sector across these production hubs is quite diverse, with the highest concentration of women workers in Bangalore and Tirupur. A large number of women workers employed in the garment sector migrate with their families for employment from Uttar Pradesh, Bihar, Jharkhand, Orissa and West Bengal. By contrast, a greater proportion of single women migrate for employment to RMG production hubs in South India.

Within a single factory, workers are employed by different contractors responsible for particular production lines. Line contractors may also function as supervisors. Many workers employed on these lines are hired as daily wage workers. The vulnerability of women garment workers is heightened by their socio-economic status. Most are from socially weaker or marginalized sections of Indian society. High levels of labor mobility between factories within the garment sector in India also undermines collective bargaining.⁶³

Long working hours, hazardous working conditions, lack of basic services such as first aid, drinking water and sanitation affect women workers more severely than men. Women workers are also particularly vulnerable to lewd comments, sexist taunts and other forms of harassment from supervisors and male employees. Extended hours in the informal garment sector also places women workers in extremely unsafe and precarious situations. They must travel at night

⁶³ Silliman Bhattacharjee, supra note 60.

through poorly lit areas where they face growing incidences of rape, sexual assault and physical violence. Women workers are also rarely given sick leave and denied pay during maternity leave in violation of the Maternity Benefit Act, 1961.

B. Domestic work in India

Across the globe, privatization of social services has exacerbated the demand for paid care work and the corresponding burden of paid and unpaid care work for poor and marginalized women. Those who can afford to pay for care—including care for children, the elderly and other dependents—hire low wage workers who are most often women. Those who cannot, do their best to look after dependent family members at home, a task that also disproportionately falls to women. This gendered distribution of care work can be attributed to both lack of services and public infrastructure to reduce unpaid household and care work; and gender-based social norms under which women are considered to be the primary care providers.⁶⁴ As a result, women at the bottom of the socioeconomic pyramid meet the care needs of others while their rights to health care, social protection and decent work are systematically denied.

Paid domestic work forms a subset of the continuum of care workers. A “domestic worker” is defined in ILO Convention No. 189 as “any person engaged in domestic work within an employment relationship (Art. 1(b)). This definition includes domestic workers engaged full-time, part-time and those working for multiple employers. The employer may be a member of the household for which the work is performed or an agency or enterprise that employs

⁶⁴ International Labour Organization, WOMEN AT WORK TRENDS, 2016, http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_457317.pdf.

domestic workers and makes them available to households.⁶⁵ Hired domestic workers undertake household work for remuneration. Tasks frequently include care of children and the elderly, cooking, cleaning, washing clothes, grocery shopping and running errands.⁶⁶ Domestic work can play a dual role in women's economic empowerment: domestic work serves as both an avenue for employment for women workers and facilitates employment outside the home for women who can afford to hire domestic workers.

There is no conclusive data on the exact number of domestic workers in India.⁶⁷ Analysis of National Sample Survey Organization data (NSSO 2006) suggests that the number of domestic workers in India was 4.2 million in 2004-2005. Since these estimates were made, 2009-2010 NSSO data estimates that .8 percent of all employed persons work within private households as domestic workers.⁶⁸ By contrast, the Employment and Unemployment Survey, conducted by the Labour Bureau estimates that 2.7 percent of all employed persons are employed by private households.⁶⁹

⁶⁵ International Labour Office, *DECENT WORK FOR DOMESTIC WORKERS, CONVENTION 189 & RECOMMENDATION 201 AT A GLANCE* (2011), http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_170438.pdf

⁶⁶ United Nations India, *About Domestic Workers* (last visit March 4, 2018), <http://in.one.un.org/page/rights-for-domestic-workers>. See also The ILO Domestic Workers Convention (No. 189)(defining "domestic work" as "work performed in or for a household or households" (Art. 1(a)).

⁶⁷ International Labour Organization, *DOMESTIC WORKERS ACROSS THE WORLD: GLOBAL AND REGIONAL STATISTICS AND THE EXTEND OF LEGAL PROTECTION 14* (2013), http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_173363.pdf. (ILO 2013:14).

⁶⁸ Government of India, Ministry of Statistics and Programme Implementation, *National Sample Survey Office (NSSO), KEY INDICATORS OF EMPLOYMENT AND UNEMPLOYMENT IN INDIA, 2009-2010, NSS 66TH ROUND* (2011).

⁶⁹ Government of India, Ministry of Labour and Employment, *REPORT ON EMPLOYMENT AND UNEMPLOYMENT SURVEY (2009–10)(2010)*.

According to 2014 estimates by India's National Domestic Workers Movement (NDWM), nearly 90 percent of domestic workers are women or girls—with 25 percent below age 14.⁷⁰ Young female domestic workers make up a significant portion of the population of India's working children. A 2007 study conducted by the National Commission for the Protection of Child Rights found that 23.2 percent of all working children are domestic workers and 81.16 percent of domestic child workers are girls. Child domestic workers may be sent by their parents with agents to be placed with employers.⁷¹

Domestic workers are among the most vulnerable groups of workers in India and globally. Frequently engaged in the homes of their employers—off the public radar and without clear terms of employment—domestic and other care workers are particularly vulnerable to exploitation and abuse. Domestic workers routinely face low wages and excessively long hours with no guaranteed weekly rest. They may be vulnerable to physical, mental and sexual abuse and restrictions on freedom of movement. These patterns of exploitation can be attributed in part to gaps in legal protections for domestic workers and discrimination on the basis of gender, race, caste and national origin. Recognizing the significant social contributions and unique vulnerabilities of domestic workers, the ILO Domestic Workers Convention, 2011 (No. 189) lays down rights of domestic workers as 'workers' and hence entitled to all rights as available to workers generally. It also recognized domestic work as 'work' and sets standards

⁷⁰ United Nations Development Programme (UNDP), SYNTHESIS OF IMPORTANT DISCUSSIONS ON LIVELIHOOD AND MICROFINANCE ISSUES OF DOMESTIC WORKERS (2012), <http://www.in.undp.org/content/dam/india/docs/poverty/synthesis-of-important-discussions-on-livelihood-and-mf-issues-r.pdf>

⁷¹ United Nations India, [About Domestic Workers](http://in.one.un.org/page/rights-for-domestic-workers) (last visit March 4, 2018), <http://in.one.un.org/page/rights-for-domestic-workers>.

for conditions of work and asks for establishing procedures to protect their rights and guarantee their entitlements at work.

High unemployment rates and mass displacement triggered by uneven development within India precipitates mass migration for employment among women and girls from rural and tribal areas, including Bihar, Chhattisgarh and Jharkhand. Women and girls from *Dalit* (Scheduled Caste) and *Adivasi* (Scheduled Tribes) migrate for employment in domestic work to Delhi, Mumbai and other cities.⁷² They frequently lack literacy, alternate income generating opportunities at source areas, land and assets. These women and girls, at the bottom of the socioeconomic pyramid in India, provide for the care needs of others while their rights to health care, social protection and decent work are systematically denied.

Part III: Women's labor migration within India

A. Factors precipitating migration within India

Women's migration within India is precipitated by both increased opportunities for employment in urban industrial centers; and disruption of livelihoods and food security in high migration sending areas.⁷³ In key source areas for rural-urban migration—including in Andhra Pradesh, Bihar, Chhattisgarh, Jharkhand, Madhya Pradesh, Odisha, Rajasthan, Tamil Nadu, Uttar Pradesh, Uttarakhand and the Northeastern States—factors precipitating migration may include conflict-related displacement, development driven displacement, public divestment

⁷² Self Employed Women's Association (SEWA), *DOMESTIC WORKERS' LAWS AND LEGAL ISSUES IN INDIA* (2014).

⁷³ Jagori. *MIGRATION, TRAFFICKING AND SITES OF WORK: RIGHTS AND VULNERABILITIES—A PILOT STUDY: REPORT OF INITIAL FINDINGS IN RAJASTHAN AND GUJARAT* (2016), <http://www.jagori.org/wp-content/uploads/2006/02/migration%20final%20report.PDF>.

from social protection, agricultural decline, natural resource erosion, natural disasters and household-level economic and social distress.⁷⁴

Localized violent conflicts may not only fuel migration but also foster violent confrontation. In this context, women and sexual minorities may face a gendered-continuum of violence. Conflict related violence has also resulted in increased populations of disabled women and added instability for women and girls with disabilities. Women and girls with disabilities may face even greater barriers to seeking alternate livelihoods than other vulnerable migrant women, including discrimination in access to housing in destination areas and heightened risk of sexual violence in public spaces.⁷⁵

Upon arrival in destination areas, women workers from marginalized communities most typically find employment in the informal or unorganized sector as domestic workers, in brick kilns, in the entertainment sector and in low skill positions within garment factories and at the production base of global supply chains. Undervaluation of women's work in the paid economy exacerbates the already precarious nature of women's employment.⁷⁶

B. Identity and vulnerability

⁷⁴ Deshingkar and Akter, *supra* note 45.

⁷⁵ Shikha Silliman Bhattacharjee, GENDER AND THE RIGHT TO MOBILITY IN SOUTH ASIA: CHANGING THE DISCOURSE AROUND RIGHTS TO MOVEMENT, LIVELIHOOD AND DECISION-MAKING FOR WOMEN AND SEXUAL MINORITIES (2016).

⁷⁶ Deepta Chopra, Policy Briefing: Balancing Paid Work and Unpaid Care Work to Achieve Women's Economic Empowerment, Issue 83 [online] (2015), https://opendocs.ids.ac.uk/opendocs/bitstream/handle/123456789/5623/PB83_AGID316_Balancing_Online.pdf;jsessionid=8B4181F85350383FC8878A3B78AB112E?sequence=1.

Within India, low income women from marginalized communities who travel to industrial and service hubs in search of employment include a large proportion of Scheduled Caste (*Dalit*), Scheduled Tribe (*Adivasi*)⁷⁷ and Muslim women. These women frequently lack literacy, do not have access to income generating opportunities at source, and/or do not have land and assets. With fewer options for employment, they may be willing to take more risks to meet their personal and family needs. They may also have fewer networks and less information to guide them in their migration processes. Young girls are particularly vulnerable to exploitation since they may not be given the option to make an informed choice about migration.

Migrant, women, child, *Dalit*, *Adivasi* and Muslim workers are at severe risk of exploitation and exclusion from decent work. Workers at the intersection of these categories are particularly vulnerable to rights abuses. While India's *Equal Remuneration Act, 1973*, requires an employer to pay workers doing same work or work of similar nature to be paid equally, this protection does not get used/enforced to protect workers from wage discrimination along gender caste, tribal or communal lines. Without adequate enforcement of protection against exclusion and wage discrimination, the market in India consolidates rather than reduces social processes of exclusion.

C. Stigmatized work and compounded vulnerability

⁷⁷ Scheduled Caste and Scheduled Tribe groups, also known as *Dalits* and *Adivasis* respectively, are eligible for quotas in education and government jobs and protected under the Scheduled Castes and Scheduled Tribes Prevention of Atrocities Act, 1989. See Shikha Silliman Bhattacharjee, CLEANING HUMAN WASTE: MANUAL SCAVENGING, CASTE AND DISCRIMINATION IN INDIA (2014).

Stigmatization of women's work refers to social and other processes that systematically devalue particular types of women's work. In India, forms of stigmatized work include brick kiln, construction, domestic, entertainment, and sex work.⁷⁸ These informal sector occupations share the common characteristic that they employ large numbers of migrant women. Gendered constructions of stigmatized work are informed by legal, political, cultural, and ideological discourses that are anchored in patriarchal social systems.⁷⁹ Stigma manifests in patterns of social exclusion that compound women's vulnerability to rights abuses.⁸⁰

Whether driven by aspirations for better economic futures or compelled to migrate due to displacement, flows of remittances from women workers to rural and urban areas across India transform women's lives and the lives of their families and communities. In some cases, these contributions may also affect subtle but important changes in the gender balance of power at the household and societal levels. The following account explains how women's contributions are unacknowledged even as their earnings are absorbed to support the family:

Women who leave are looked down upon and stigmatized. When men come back, they relax and enjoy themselves. Community members ask what they did and bought and what movies they saw. Women are never asked these questions—it is expected that the

⁷⁸ See Shikha Silliman Bhattacharjee supra note 75.

⁷⁹ See Shikha Silliman Bhattacharjee, Gendered Technologies of Power: Experiencing and Unmaking Borderscapes in South Asia, BERKELEY PLANNING J. 29:1.

⁸⁰ The relationship between stigmatization and the most extreme forms of rights abuses can be further explained through engagement with historical and anthropological literature on slavery. As explained by Orlando Patterson in *Slavery and Social Death*, slavery is not only coercive labor backed by violent domination, but also “a highly symbolized domain of human experience” in which slaves experience “social death” and dishonor in the society in which they are enslaved. See Orlando Patterson, SLAVERY AND SOCIAL DEATH 79-80 (1982). The relationship between slavery, social death, and dishonor lends insight into how stigma functions as a pivotal process of social control. Stigma against particular types of work can be mobilized to restrict women's mobility and livelihood choices, and undermine their rights at work. These restrictions, in turn, increase women's vulnerability to transit based violence and unregulated, unsafe and unprotected work.

money they earn is not for them, it is for the family. They are never given time to enjoy themselves.

Young women and girls who return from destination areas—regardless of the sector in which they are employed—are tagged as “Delhi-returned.” This label is loaded with a negative connotation that makes it difficult for them to marry boys from “respectable” families.⁸¹

Policy, media and popular discourses that stigmatize migration for employment and collapse distinctions between migration for work and trafficking for commercial sexual exploitation, increase the vulnerability of migrant women workers. Stigma associated with migration may also cause women workers to forego efforts to pursue accountability in cases of workplace and transit related abuses. In this context, cultural and ideological discourses collude with economic incentives to undermine rights at work for migrant women workers, depress wages, and leave migrant women workers at risk exploitation and violence.⁸²

Part IV: Methodology

A. Primary data

Despite the significant role that labor recruiters play in India’s economy, documentation of the wide range of internal recruitment practices is at a nascent stage. This research aimed to identify the range of recruiting practices and types of formal and informal labor recruiters currently operating in India in the Ready-Made Garment and domestic work sectors. Primary

⁸¹ This account is drawn from Silliman Bhattacharjee, *supra* note 75 at 13.

⁸² While at risk of exploitation and violence, migrant women workers in India and other parts of South Asia also confront and resist gendered exploitation and violence. *See* Silliman Bhattacharjee, *supra* note 79 (considering how local, national, and regional networks of migrant women in South Asia circumvent restrictive policies and resist patriarchal binaries).

data collection involved investigating recruitment networks in both urban destinations and high migration rural areas. Primary data collection was undertaken in the urban destination areas of Mumbai and the Delhi, National Capital Region (NCR); and in rural source areas of Bihar, Chhattisgarh and Jharkhand. These regions were selected due to particularly high rates of rural-urban migration, high density of migrant populations and significant levels of migration for employment in garment and domestic work.

Primary data collection involved investigation of recruitment chains in both urban destination and high migration rural areas. The results of this study are based upon field research conducted by the Society for Labour and Development (SLD),⁸³ a labor organization based in Delhi, India, between August 2015 and November 2016. Field research was informed and framed through prior desk research on relevant national standards, ILO Conventions and other international standards protecting migrant workers and regulating recruitment practices.

This applied research included primary data collection, through four phases of data collection and analysis, detailed below. Research Phase 1 was exploratory and aimed to inform research design and data-collection strategies. Subsequent Research Phases (2-4) used purposive sampling techniques to identify women who had migrated for employment from select districts

⁸³ SLD is a Delhi, India-based labor rights organization that believes in equitable development through social and economic well-being of labor, migrants, and women workers; and through cultural renewal among disenfranchised people. SLD is a national organization that originated with a focus on the National Capital Region and works with partners in Uttar Pradesh, Bihar, Jharkhand, and Kerala. SLD engages in its work through collaboration and long-term coalition-building, with a focus on the rights of workers and marginalized people. We work at the grassroots and believe in an Asian framework for engaging Internationally. See Society for Labour and Development, <http://sldindia.org/>.

in Bihar, Chhattisgarh and Jharkhand to the Delhi-NCR and Mumbai within the last 5 years. This non-probability sample aimed to encompass variation in the types of recruitment pathways and actors engaged by respondents within identified high migration corridors.

Data for this study was collected using mixed qualitative and quantitative methods, including location studies in Phase 1 and 254 structured interviews and 63 focus group discussions in Phase 2. The structured interviews and focus group discussions completed in research Phase 2 were analyzed through multiple phases of hand coding. Together with researcher Falak Jalali, I hand coded each structured interview for key features of recruitment processes and labor supply chain segmentation. Recruitment processes, practices and labor supply chain segmentation identified in Phase 2 research was contextualized through extended interviews, case studies and interactive observation in Phases 3 and Phases 4.

Research phase 1

Field investigation included preliminary site visits, focus group discussions (FGDs) and interviews with workers, NGOs and activists to identify recruiting practices and their prevalence in identified sites in target areas.

At the conclusion of Research Phase 1, final research locations were selected due to presence of migrant women workers employed in the garment and domestic work sectors who had migrated for employment within the last five years; and the reach and capacity of Society for Labour and Development partner organizations and community networks that facilitated engagement with migrant workers.

Primary data collection was undertaken in urban destination areas of Mumbai (Bandra West, Andheri East, Powai, Vikhroli, Santacruz West) and the National Capital Region (NCR) (Dhundaheera, Kapashera, Karterpuri, Nathupur, Sikanderpur Ghosi); and in rural source areas of Bihar (Gaya, Katihar, Motihari), Chhattisgarh (Sarguja, Jashpur) and Jharkhand (Gumla, Khoonti, Simdega). These regions were selected on the basis of particularly high rates of rural-urban migration and high density of migrant populations (Figure 1).



Figure 1: Primary data collection sites

Research phase 2

Building upon the preliminary investigative maps developed in research Phase 1, Phase 2

included 254 structured interviews with migrant workers; and 63 FGDs, including with women labor migrants and labor recruiters (Table 1).

Table 1: Location of interviews and focus group discussions (FGDs)

State	District	Industry		Interview totals	Focus Group Discussions
		Domestic work	Garment work		
Bihar	Motihari	9	9	18	5
	Gaya	6	12	18	5
	Katihar	7	11	18	5
	<i>State totals</i>	22	32	54	15
Jharkhand	Khunti	18	0	18	10
	Gumla	10	9	19	8
	Simdega	7	3	10	2
	<i>State totals</i>	35	12	47	20
Chhattisgarh	Jaspur	19	2	21	23
	Sarguja	28	0	28	0
	<i>State totals</i>	47	2	49	23
Gurgaon	<i>Area total</i>	26	24	50	4
Mumbai	<i>Area total</i>	26	28	54	1
Study totals		156	98	254	63

Structured interviews and FGDs sought to identify recruitment actors, processes and patterns.

The questions posed aimed to segment migration and recruitment pathways into six stages:

advertisement, establishing qualification, learning about an employment opportunity, entering

a contract, migrating to a place of employment and securing a job. At each key stage,

structured interviews and FGDs with migrant workers aimed to document:

- the structure and segmentation of recruitment pathways;
- how migrants are contacted, attracted, selected and/or enticed for recruitment;
- the nature of information provided to and garnered by workers;

- formality and informality among labor recruiters;
- financial and other costs to labor migrants; and
- rights violations faced by labor migrants.

In order to identify how gender, class, caste, education, age and other relevant demographic factors affect recruitment practices, structured interview schedules invited respondents to self-identify as members of Scheduled Castes (SCs), Scheduled Tribes (STs), Other Backward Classes (OBCs). The distribution of women workers who identified as belonging to Scheduled Castes, Scheduled Tribes, Otherwise Backward Castes and other categories are presented in Table 2.

Table 2: Distribution of respondents from Scheduled Castes and Scheduled Tribes

	Delhi-NCR	Jharkhand	Bihar	Mumbai	Chhattisgarh	Total
Other Backward Class	11	1	21	17	4	54
Scheduled Caste	23	0	22	10	2	56
Scheduled Tribe, including women who identify as Christian	11	40	0	0	39	90
Other	5	1	6	10	0	22
No response	0	5	5	17	3	32
Total	50	47	54	54	49	254

Note: This distribution of respondents among social identity categories reflects self-identification by study respondents.

Among the migrant women workers interviewed within the Delhi-NCR, 46 percent of respondents (23 out of 50) self-identified as belonging to Scheduled Castes; 22 percent of respondents (11 out of 50) self-identified as belonging to Scheduled Tribes; and 22 percent of respondents (11 out of 50) self-identified as belonging to Other Backward Classes. In Bihar, 40-

41 percent of respondents (22 out of 54) identified as belonging to a Scheduled Caste; and 40 percent (21 out of 54) self-identified as belonging to Other Backward Classes. In Chhattisgarh, 79 percent of women respondents (39 out of 49) self-identified as belonging to Scheduled Tribes; and in Jharkhand, 85 percent of women respondents (40 out of 47) self-identified as belonging to Scheduled Tribes. While these figures on social identification cannot be considered representative, they do suggest the significance of study findings in understanding the migration experiences of women from marginalized communities.

Research phase 3

In research Phase 3, researchers investigated recruitment practices in source and destination areas using extended interviews, case studies and interactive observation through engagement with recruitment intermediaries. Recruitment practices and labor supply chain segments investigated during Phase 3 included:

- recruitment through informal networks (family, friends);
- sub-agents who may work with a range of placement agencies;
- agencies that present themselves solely as placement agencies but engage in recruitment through sub-agents;
- agencies that present themselves as training centers but engage in recruitment through sub-agents, including NGOs, trusts and societies engaged in recruitment;
- subcontractors;
- employers, factory and production live supervisors who engage in recruitment of employees;
- professional and community based networks among workers in both the garment and domestic work sectors; and
- temporary staffing agencies.

During Phase 3 investigation, researchers sought to identify the structure of recruitment pathways from source to destination areas; financial and other costs to labor migrants within each recruitment segment; and fair and abusive recruiting practices.

Phase 3 also included additional semi-structured interviews with workers and interviews with community leaders and civil society organizations with direct or indirect interests in processes of migration and recruitment. In order to grasp the structure of recruitment and placement within the garment industry, researchers conducted interviews with line in-charge,⁸⁴ supervisors, trade union representatives, community organizers and senior workers who had not recently migrated for employment.

Research phase 4

In research Phase 4, researchers conducted interviews and discussion based workshops with a range of labor recruiters that recruit migrants from high migration rural areas for employment as garment and domestic workers in Mumbai and the NCR. Workshop participants included labor recruitment agencies, sub-agents at multiple levels; and supervisors, contractors and employers who engage in recruitment. Interviews and discussions aimed to triangulate primary and desk research findings, with a focus on:

⁸⁴In garment factories, “line in charge” manage tailors in their line. Their roles include disseminating information about garment measurements and regulating the quantity and quality of garments produced in their line. Information regarding work specifications are passed from the cutting department to the floor in charge, line in charge and finally tailors. Given their position and authority within production processes, line in charge workers interviewed for this study were able to provide significant insight into recruitment, training, placement and working conditions.

- How wage rates are determined and paid, including: the role of skills and physical characteristics in determining wage rates; wage differentials within localities and types of employment placements; whether wages are paid in cash or through bank transfers and to whom (to the agency or worker); and whether minimum wages are honored;
- The nature of contracts with employers and migrants;
- Whether recruitment actors would like to be governed by charters, codes of conduct and practice standards (including what key elements a charter or code might contain); would like to function as part of a broader association (and if so, what type of association with what collective agenda, etc.); and
- How recruiting and placement agencies can play a role in skill development leading to better remuneration, working and living conditions.

On August 12, 2016, the International Labour Organization, Work in Freedom Project and the Society for Labour and Development held a one day workshop in the Delhi-NCR with recruitment actors engaged in recruitment, training and placement of workers in the domestic work sector. This workshop included 17 participants representing 9 small and medium scale recruitment agencies. Through a collective reflection process, this workshop sought to facilitate cross learning between participants, share good practices, identify key challenges and encourage collaborative brain storming and problem solving.

On August 16, 2016, 6 participants representing a range of roles within the garment sector attended a one-day focus workshop hosted by the International Labour Organization, Work in Freedom Project and the Society for Labour and Development. Workshop participants included former garment workers, a line supervisor, a quality control manager, representatives from a women's empowerment platform and an NGO that specializes in recruitment, training and placement. This focus group discussion sought to identify key features of recruitment placement and training within the garment sector in the Delhi-NCR, identify good practices and

highlight challenges facing the wide range of actors engaged in recruitment, placement and training.

B. Secondary data

Primary data has been contextualized through extensive secondary research. Secondary sources include media reports from target areas; official records, including data from government ministries; reports from national and international organizations addressing labor migration; and books, journals and periodicals.

C. Research limitations

This study sought to combine qualitative and quantitative insight into migration for employment into the garment and domestic workers by women from high migration areas in North India. This hybrid research design, grounded in the documentation of the lived experiences of respondents, has significant external validity. However, internal validity—or the ability to draw causal conclusions on the basis of study findings—is limited since selection of study respondents did not seek to establish a representative sample. In the absence of official data on the presence of migrant populations in migration destination areas, researchers identified residential communities where garment and domestic workers lived based upon initial site investigations.

In both high migration source and destination areas, researchers confronted significant challenges in engaging migrant women workers and labor recruiters. Challenges associated with interviewing women who migrate for employment included: stigma associated with

migration for migrant women workers that created obstacles to identifying and engaging women who migrate for employment; and reluctance among respondents to discuss trauma associated with migration and workplace violence. Due to extended working hours and circumscribed mobility among domestic workers living and working within employer households on a full-time basis, researchers also had significant difficulty conducting extended semi-structured interviews with full-time domestic workers in Delhi and Mumbai.

There is also currently no reliable government data on the prevalence of labor recruiters focused on internal migration in India and the types of services provided by them. Further obfuscating recruitment and placement practices, across research sites, migrant workers reported both significant difficulty in recalling the names and identities of employers, agents and recruitment intermediaries and reluctance to discuss experiences with recruitment intermediaries. These challenges and the research strategies adapted to overcome them are detailed in the discussion below.

Challenges associated with interviewing women who migrate for employment

Across Bihar, Chhattisgarh and Jharkhand, stigma associated with migration for migrant women workers created obstacles to identifying and engaging women who migrate for employment. For instance, respondents reported that young women and girls who return from destination areas are tagged as “Delhi-returned.” This terminology is associated with negative connotations. Migrant women reported that the stigma associated with migration makes it difficult for them to find husbands from “respectable” families. The stigma associated with

migration causes many returnee migrants to hide their experience of migration. Therefore, it required significant effort from researchers to identify potential respondents.

In order to navigate this challenge, researchers worked in teams including both male and female researchers. They also sought partnerships with local organizations in order to facilitate access to engagement with women workers. During Research Phases 1 and 2, for instance, researchers interviewed 27 domestic workers at meetings conducted in All India Democratic Women's Association (AIDWA) offices in Mumbai. Engagement with women workers within familiar contexts, removed from their communities, facilitated engagement among women who expressed feeling unable to speak freely about their experiences within their communities. All interviewees were assured that their identity and any identifying case information would remain confidential.

Despite the presence of female researchers, researchers across field sites noted that trauma associated with migration experiences prevented respondents from speaking freely about recruitment processes. Respondents who did engage with the research team were particularly unwilling to discuss instances of sexual violence. Field researchers were trained not to persist with lines of questioning if they recognized any signs that the conversation might re-traumatize survivors.

Researchers also had significant difficulty conducting extended semi-structured interviews with full-time domestic workers in Delhi and Mumbai. These challenges reflect extended working hours and circumscribed mobility among domestic workers living and working within employer households on a full-time basis. While researchers met briefly with some full time domestic

workers within destination areas, the extended access to domestic workers required to complete the interview schedule proved untenable. While researchers reported initial difficulty in identifying former full-time domestic workers among returnee migrants in high migration source areas, women who agreed to participate in extended semi-structured interviews were, for the most part, able to complete the entire interview schedule.

In order to address these challenges, researchers sought insight from full time domestic workers during Research Phase 4 using a range of techniques including participant observation and shorter, unstructured engagement strategies. For instance, in Mumbai, researchers identified a suburban public park on a late Sunday afternoon where young women and men from Jharkhand, Chhattisgarh, Orissa and West Bengal congregate on Sundays during their weekly day off. These ethnographic research methods provided significant insight into recruitment practices and labor market segmentation.

Challenges associated with identifying and accessing the full spectrum of labor recruiters operating in India

Across research locations, due to widespread lack of registration of among labor recruiters—a process mandated in only Delhi and Chhattisgarh—there is currently no reliable government data on the prevalence of labor recruiters focused on internal migration in India and the types of services provided by them. For instance, of 100 labor recruiters in Delhi and the NCR surveyed in a 2013 NLI study, 67 percent of labor recruiters claimed to be registered but only 3

percent had registration numbers; the remaining 33 percent of labor recruiters surveyed reported that they were not registered.⁸⁵

Further obfuscating recruitment and placement practices, across research sites, migrant workers reported both significant difficulty in recalling the names and identities of employers, agents and recruitment intermediaries and reluctance to discuss experiences with recruitment intermediaries. First, in almost all cases, worker respondents were unable to produce clear documentation related to either their recruitment or employment. These gaps in information made it particularly challenging to effectively trace recruitment pathways from source to destination areas. Second, in high migration and recruitment source areas, interviewees reported that many recruitment networks operate under overt and tacit protection from local politicians and administrative officials. Migrant respondents also report fearing repression and violence at the hands of local agents, placement intermediaries and employers. Many reported escaping from abusive employment relationships. Some respondents showed reluctance to answer questions since the recruitment intermediaries they engaged with and/or related agents remained active in the area. Accordingly, we have reason to suspect that interviewees may have concealed information concerning labor recruiters that posed a risk to their safety.

Difficulty in identifying survivors of commercial sexual exploitation was attributed among local partners and researchers to the perceived power of recruitment networks engaged in trafficking for commercial sexual exploitation in Bihar, Chhattisgarh and Jharkhand.

Furthermore, since victims of serious violations including violence and fraud generally do not

⁸⁵ Samantroy, *supra* note 53.

take discernible action against perpetrators on their own at the police, legal or social level, formal legal documentation of rights abuses was not accessible to researchers. Within this context, researchers assessed on numerous occasions that the likelihood and significance of risks to themselves and respondents of probing particular recruitment networks was too high to persist with further investigation.

Part V: Recruitment and placement of migrant women workers

Migrant workers, including migrant women workers, rely upon formal and informal labor recruiters to facilitate employment. Due to circular migration patterns and movement between employers, workers may seek out recruitment opportunities on a regular and ongoing basis. In the absence of effective regulation of employment and recruitment, informal labor recruiters play a dual function. First, they play the well understood role of sourcing labor for formal and informal employers. Second, they play a less well-known role in checking or vetting the reliability of informal employers interested in hiring workers. The second facet of this role, often ignored or misunderstood in contemporary discourses on human trafficking, is particularly important for the success of informal labor recruiters who seek to establish a reputation for successful placement in order to attract more clients.

A. Prominence of informal networks

Many workers who migrate for employment within India do so based upon opportunities they learn about informally, through individual contacts, kinship or social networks. Of the 254 migrant workers interviewed for this study, including those who sought employment in the

domestic and garment sectors, 76 percent (194 respondents) reported relying upon informal networks at some stage in the migration process or while seeking employment.

Since family members and senior workers may also have ties to specific employers, lines between informal network-based placement, sub-agents and others forms of labor recruiters are difficult, if not impossible, to firmly delineate. Twenty-six percent of workers interviewed for this study (66 respondents) who described involvement by informal networks in migrating and seeking employment also described enlisting an alternate placement structure—including combinations of agents, subagents, contractors, subcontractors, employers, training centers, non-governmental organizations, trusts and security guards. Within placement channels, informal networks and recruitment intermediaries both intersect with more formal labor recruiters and exist outside established regulatory frameworks.

The following sections describe patterns of recruitment and placement of internal migrants who seek employment as garment and domestic workers. The recruitment and placement pathways and practices described in this section were derived from hand coding the 254 structured interviews conducted in research Phase 2. In order to project the lived experienced of migrant women garment and domestic workers, these sections include direct quotations from interviews and focus group discussions.⁸⁶

⁸⁶ All names have been withheld or replaced with pseudonyms to protect the identity of respondents.

Where possible, I describe particular stages in recruitment and placement where boundaries between informal and formal recruitment intermediaries seem to intersect, collapse or emerge. The complexity of migration, recruitment and placement channels segments accountability among labor recruiters and employers. As a result, no individual stakeholder—whether a labor recruiter, regulator or employer—can independently guarantee a fair outcome to workers who migrate for employment.

Table 3: General overview of departments and employees within garment factories and fabricators

Fabric store	Cutting	Fusing/pasting	Embroidery	Production	Finishing/Packing
	<ul style="list-style-type: none"> -Supervisor In-charge -Quality control monitor -Sticker master -Checker -Pattern master -Cutting machine operator -Layer man -Button machine operator -Helper (W) 	<ul style="list-style-type: none"> -Supervisor In-charge -Machine operator -Helper (W) 	<ul style="list-style-type: none"> -Supervisor In-charge -Operator (W) -Helper (W) 	<ul style="list-style-type: none"> -Supervisor In-charge -Quality control monitor -Record keeper -Line in charge -Line tailor -Checker (W) -Helper (W) 	<ul style="list-style-type: none"> -Supervisor In-charge -Quality control monitor -Helper (W)

Note: Designations in bold indicate permanent workers. (W) Indicates concentration of women workers.

Within departments, workers are employed on both a permanent and contingent basis—including monthly wage, daily wage and piece rate workers. Sample tailors—those responsible

for making the sample approved by brands who outsource to garment factories—are uniquely highly valued and hired as permanent company workers. Other categories of permanent workers include supervisors, line in-charge and quality control monitors (Table 3).

Consistent with the high levels of informality and non-standard work discussed in Part I, in both the Delhi-NCR and Mumbai, the vast majority of workers interviewed for this study were employed on a contingent basis (including part time, seasonal and daily wage). Only specialized positions were filled by permanent workers. Whether employed by garment factories or fabricators, women workers reported being confined to contingent positions. Of the 99 women garment workers interviewed for this study, none of them had ever worked as a permanent employee. Of all the women employed in the garment sector at the time of interview, all were either employed as contingent workers or temporarily unemployed. Women respondents were predominantly employed as helpers and checkers in the production and finishing departments—involved in thread cutting and packaging. Since sampling for this study was not random, these figures cannot be considered strictly representative. The concentration of women workers in contingent positions, however, was widely noted among a range of study respondents in subsequent phases of data collection.

Among the 77 women employed as contingent workers, 47 were paid on a monthly basis, 8 paid on a weekly basis, 3 paid on a daily basis and 14 paid by the piece (piece-rate). The remaining 5 workers did not specify their pay schedule. Workers report that these distinctions impact their employment prospects. One respondent explained:

The daily wage workers face a lot of stigma. If one is recognized as a daily wage worker within the factory, it makes it difficult to get regular employment in that factory. Daily wage workers are considered unskilled and not good at their jobs.

As described above, advancement from daily wage work to more skilled work within garment production units in the Delhi-NCR and Mumbai is not common. While some women do attain higher skilled positions as embroidery operators and line tailors, workers reported that such advancement is comparatively rare. In Mumbai, workers describe a process of advancement tied to winning acceptance of the most senior workers or “*Masterjis*.” Within this male-dominated, patriarchal structure of advancement, women workers may face gender-based barriers to advancement beyond those experienced by men.

1. Segmentation of the labor supply chain for garment factories and fabricators

While the majority of workers who identified as garment workers were employed at the time of interview, workers commonly reported working ten months of the year, with July and August as routine periods of retrenchment due to fashion production cycles. Workers reported returning home to migration source areas during these periods of unemployment.

Accordingly, as described in the sections that follow, it was common for workers to engage in recruitment and placement following these annual periods of unemployment. Workers also reported regular shifts between and among garment fabricators and factories. Due to the regularity with which migrant women garment workers seek employment, most described experiences with more than one of the recruitment actors described below.

1.1 Formal contractors

Large contractors that function as labor recruiters are significant actors in training and placing workers within the garment industry in the NCR. Garment factories hire large contractors to supply workers across a range of departments. Workers report that within one garment factory, two to three contractors may be responsible for providing workers at any given time.

Workers may be hired directly by large contractors. In such cases, large contractors may send affiliated agents—either employed by the contractor full time or on commission—to recruit in areas where workers live and work. For instance, one worker reported that large contractors in the NCR—sends affiliated agents by motorbike to areas in Udyog Vihar to identify and recruit migrant workers.

Garment workers interviewed for this study reported perceiving numerous advantages associated with working for these large contractors. These include regular payment of wages and the ability to rely upon consistent work, since large contractors typically supply workers to many garment factories. As one worker explained:

Working directly with the big contractors is preferable. They are trustworthy. They give wages on time, PF and ESI are provided. It is easy to take a day off without deductions from wages.

However, trade union representatives and union affiliated workers also reported that large contractors are strategically used to inhibit freedom of association and collective bargaining in garment factories in the NCR. First, since large contractors supply garment factories with not only workers but also supervisors, large contractors create disincentives for unionization. Second, the availability of a pool of contract workers makes it easier for garment factories to fire and replace workers who attempt to unionize. The availability of a consistent pool of

trained contract workers reduces costs of firing workers by ensuring that production proceeds uninterrupted.

1.2 Subagents

Large contractors also transfer the task of hiring workers for particular production lines to unregistered subagents. These subagents may also function as line in-charge. As one worker explained: *“The company pays the contractor and the contractor keeps a smaller subagent to get people into the company.”*

Workers interviewed for this study in the NCR reported numerous avenues to finding employment through subagents. For instance, it is common for workers to make contact with subagents by waiting at the factory gate. One worker recounted:

A line in charge will stand outside the gate with a writing pad and call out the name of a department where a worker is required. If they need more workers than they find at the gate, they may go to peer baba chowk [a labor chowk – a place where potential workers congregate to be picked up by contractors/employers for daily wage/short duration work] and pick up workers.

Consistent with the description above, numerous workers reported that when a large number of workers are required, they may send subagents associated with the contractor to actively recruit workers waiting at labor *chowk* areas—particular intersections where daily wage workers congregate and can be picked up for employment.

Within production lines, line managers interviewed for this study reported that new workers may be required to undergo informal, unremunerated training for extended periods of time. As one line-manager in Gurgaon explained:

Work within factories is distributed by the line in charge to a group of workers. New untrained workers may assist the group but may not receive wages for the first 1-3 months of employment during this (informal) training period.

Workers in Mumbai described a similar process of informal training. Helpers in the tailoring industry in Mumbai may spend at least a few months—and at times more—working in very low skill, unremunerated or meagerly paid work before winning the acceptance of a *Masterji* (master tailor) that is required to advance within the production process.

Alternately, workers may learn about employment with a particular subagent through professional networks. Relationships between workers, subagents and line managers may be longstanding. Workers may return to work with the same line manager after seasonal gaps in employment or if they receive a direct call from a line manager with whom they have worked in the past. One worker described maintaining ongoing relationships with subagents:

Subagents keep the details of all workers they have every worked with. At times, like when there is an urgent assignment, the subagent will call me and other workers over the phone and asks us to report for work.

When working relationships are positive, workers may move with their line manager or a subagent from one factory to another. At best, these informal alignments can function to offer workers the combined benefits of flexibility, mobility and some level of stability in being able to reenter the garment production industry after gaps in employment. One worker recounted:

Working with a subagent there is more flexibility. You can leave, go home, come back, talk to the subagent and get reinstated.

For workers who migrate for employment within the garment production industry, the capacity to re-engage informal employment channels after periods when they return to migration

source areas accommodates seasonal employment and the opportunity to for many workers to return home. This may be particularly important for workers who need to be home during the agricultural season and those who migrate for employment while leaving their children, parents and other family members in migration source areas.

Employment through subagents, however, also has drawbacks. Workers employed through subagents also reported receiving differential treatment from permanent workers with regard to wages, production targets and access to benefits. Workers employed as daily wage workers or as temporary workers not included in the books are not able to claim labor protections, including benefits. As one worker explained:

There are no benefits in working for a subagent. There is no bonus, no gratuity, no PF nor ESI. If you take leave, that money is deducted. People who are from the company have a sense of belonging. Those who are from contractors or subagents are differentiated and given larger production targets.

Contingent work through subagents also makes workers more vulnerable to termination during periods when garment production wanes. These periods of unemployment may cause significant hardship to workers and their families who reported falling into cycles of debt in order to pay their house rent and meet their daily needs. One worker described that between June and September, her family lives on credit:

Before October, nobody gets work. For room, rent and ration, we are in debt of Rs. 8,000-10,000. The money we earn in November and December goes to paying our pending bills.

The annual cycles of debt faced by garment sector workers in Gurgaon leave workers vulnerable to coercive practices by landlords who capitalize from their economic vulnerability by providing food rations and shelter on credit and requiring inflated remuneration.

1.3 Skills training centers

Within the garment production industry, skills training centers play a role in preparing workers for employment that requires a skill-level above the job of a helper. Researchers identified two distinct types of training centers: private training centers and company run training centers.

Workers can undergo training to develop skills needed for employment as sewing machine operators (tailors), hand embroiderers, pressers, sampling tailors, fabric cutters, in line checkers, layer-men, embroidery machine operators and quality checkers. Workers report that such training can be instrumental in facilitating mobility from unskilled to skilled positions.

Out of the 99 women garment workers interviewed for this study, 47 described receiving some formal or informal training in either migration source or destination areas. The average period of training ranges from 16-20 days and the costs of training vary widely depending upon the type of training center. 45 reported receiving no distinct training and instead learned on the job earning varied wages until they secured daily wage work. The remaining 7 respondents did not provide any information on whether or not they received training.

Line managers interviewed during research Phase 3 indicated a significant intersection between placement through training centers and placement through subagents. According to accounts

from senior workers, it is common for training centers to place workers through relationships with line in charge managers within factories.

Many women workers reported that they had pursued training with the objective of advancing beyond the designation of helper. Through advancement, they aimed to earn higher salaries and hold more-skilled positions. As one worker explained:

After being trained as a tailor, the wage becomes decent. Helpers are made to stand. Further training allows me to sit and work which makes it easier to work. Imagine standing for eight hours. This is a more respectable position.

The high concentration of women workers who remain concentrated as helpers and checkers (Table 3), suggests, however, that for most women aspirations of obtaining skilled work as tailors remains unfulfilled.

After completing training, workers reported being placed through relationships between training centers, sub-agents, contractors, and garment production factories. In some cases, training centers require further commissions for placing workers. While arrangements may differ, line managers indicated that in some instances training centers may charge workers retroactively for placement. These charges can be up to Rs. 1000 per month (USD 15.40).

Private Training Centers

Non-government accredited private training centers –often referred to as “*aadas*” or “learning with masterji” –are usually run by well-connected former and senior workers. Most workers who attend private training centers seek training as sewing machine operators or tailors.

According to worker reports, migrants comprise the majority of workers seeking training in

private training centers in the NCR. Private training centers run by former and senior workers can be quite small—with as few as 8-10 trainees at one time.

Duration of training in small, privately run training centers usually runs less than a month. One worker described: *“My training duration was about 20 days for 2 hours each day, seven days a week. These centers run two batches one in the morning and one in the evening.”*

Once workers have completed training, they may either seek placement through the training center or find their own employment through subagents, contractors and at factory gates.

Some workers reported that senior workers who run training centers use established professional networks to place workers. Women workers in both the Delhi-NCR and Mumbai, however, reported that there is a general perception that men are able to learn quicker, which makes it easier for them to find employment after completing training.

Women workers who did seek placement through the training center reported that they had little choice in where they were placed after they were trained. For instance, one woman reported that the training center made a decision about her placement arrangements before she had even completed her training:

I was on my 15th day of training when a contractor from [a factory] arrived at the training center. The master told me I had been appointed as a piece rate tailor at [the factory] and that I had to start tomorrow onwards. All this was decided without my consent. I had not completed my full training and was under confident to be a piece rate worker. I felt this was unfair so after working there for two weeks, I left the position. After leaving, I found it hard to find a job. I was not very comfortable with the machine so I worked as a helper.

Other women also reported that even after training they did not feel confident as sewing machine operators. Accordingly, many continued to seek employment as helpers. Without the patronage of senior workers, including line in-charge and master tailors, many women workers interviewed for this study found training to be a necessary but insufficient condition for advancement to more highly skilled and paid work.

Company run training centers

Company training centers have a much higher turnover than private training centers. For instance, one worker reported that in the company training center she attended, the company trains between 400 and 500 workers each year. Each batch may have as many as 25-30 workers.

Another worker described choosing train at a company run center because she was paid during this period—a feature she described as unique to company run training centers: *“Unlike private training centers the company run training centers pay the workers during their training period.”*

Consistent with this account, researchers found that it is not uncommon for company run training centers to hire workers as apprentices during training periods that last for 1-2 months. As apprentices, workers are usually paid less than other workers. During training, workers reported completing factory work from the alteration department.

While some workers valued the opportunity for on the job training, others reported feeling exploited, including by receiving less payment than they anticipated during their training period. For instance, one woman reported that she was promised Rs. 5,300 (USD 81.55) per

month for three months by a subagent while she underwent training within a company run training center. In the end, however, she received only Rs. 1000 (USD 15.39) for the duration of the training.

As with other recruitment channels, workers who engage in recruitment, training and placement through company run training centers also reported involvement with other recruitment actors including agents, line managers and NGOs. For instance, a Delhi-NCR based NGO reported identifying workers through “community mobilization drives” that reach out to over 150 workers per day—predominantly from Bihar, Eastern Uttar Pradesh and Uttarakhand. The NGO refers these workers to a range of placement opportunities. Workers interested in garment sector employment are referred exclusively to Matrix Pvt. Ltd., a garment manufacturer that also trains workers for employment in the garment sector. Matrix charges workers Rs. 300 for a 3-month training. Workers are placed by Matrix or within Matrix factories.

2. Recruitment for home-based garment production

Beyond the garment production sector, home-based work is a common form of employment for women across India. According to 2009-2010 NSSO estimates, 79.2 percent of the non-agricultural female workforce in urban areas was employed in home-based work. These numbers may be an underestimate due to the difficulty in comprehensively identifying home-based workers.

In India, home based workers may be either self-employed, sub-contracted or some combination. As in most countries, neither group has clear legal standing in India. The ILO Home Work Convention, 1996 (No. 177), however, recognizes sub-contracted home-based

workers as workers. Convention No. 177 calls for application of core labor standards, including setting standard for wages and working conditions, including occupational health and safety.

Many sub-contracted home-based workers produce under contracts for global value chains.⁸⁷ A 2012 study of 3,000 home-based workers conducted by the Center for Indian Trade Unions (CITU) found that the large majority of women involved in home-based work identified poverty and economic crisis as the reasons for undertaking this type of work alongside domestic and other responsibilities.⁸⁸ Accordingly, in order to protect the rights of some of India's most vulnerable women workers, regulations governing recruitment for employment should account for the rights of home-based workers in India.

The garment production industry, in both the Delhi-NCR and Mumbai, include home based workers responsible for tasks ranging from embroidery to finishing and packaging. Within the garment sector, sub-contracted home-based workers are given raw materials, paid by piece and typically contracted through an intermediary.

Home-based workers interviewed for this study reported being recruited by subcontractors. For instance, in the Delhi-NCR, subcontractors seek out women workers in labour *chowk* areas—including *Galli 8* and *Mama-hanjachowk*. It is common for subcontractors to recruit women in groups, provide raw materials and production targets and return to collect completed products. Home-based workers are most often paid by piece rate.

⁸⁷ Women in Informal Employment Globalizing and Organizing (WIEGO), Home-Based Workers, (accessed February 9, 2016), <http://wiego.org/informal-economy/occupational-groups/home-based-workers>.

⁸⁸ Coen Kompier, *supra* note*.

Piece-rate work can be highly irregular. As described by one worker:

A company person comes and gives the pieces. I do embroidery—usually at Rs. 7 per piece [USD .11] but the lowest is at Rs. 2 per piece [USD .03]. I only learn the rate when the pieces are brought to me.

Home-based workers are impacted by irregular or cancelled work orders, unreliable supplies of materials, delayed payments, underpayment and rejected goods.⁸⁹ As one worker described: “I gave 15 pieces, but was only paid for 10.”



As detailed in the preceding sections, in both the Delhi-NCR and Mumbai, while initial employment within the garment industry is often secured through informal networks, shifts in employment toward positions perceived to be better in terms of pay, position and benefits takes place predominantly through secondary networks. Within the garment industry, these secondary networks are highly complex and may include contractors, subagents, training centers, line-managers, supervisors and senior workers.

B. Recruitment and placement of women workers in domestic work

At the time of interview, 155 workers interviewed for this study identified as domestic workers. This included workers who identified as domestic workers but were not currently employed in domestic work. In the Delhi-NCR and Mumbai, researchers identified three predominant types of employment among domestic workers: full time live-in employment, part time employment and full time housekeeping work.

⁸⁹ Women in Informal Employment Globalizing and Organizing (WIEGO), *Home-Based Workers*, (accessed February 9, 2016), <http://wiego.org/informal-economy/occupational-groups/home-based-workers>.

Of the 104 domestic workers who reported being engaged in domestic work at the time of interview, 60 reported being employed as live-in full-time workers, 40 reported being employed on a part time basis. 4 reported working in commercial housekeeping—both as full time and part time employees.

An additional 51 women, including those interviewed in source and destination areas, identified themselves as domestic workers but reported that they were not employed in domestic work at the time of interview. This included 43 women living in source areas who reported being unemployed, seasonal migrant workers, engaging in daily wage work in the village or being employed through the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA).⁹⁰ In destination areas, 8 women reported being between jobs or taking a break from work. These disruptions in employment status commonly occur when domestic workers take extended leave to fulfill family and personal obligations.

1. Segmentation of the labor supply chain for full-time domestic work

⁹⁰ The Mahatma Gandhi National Rural Employment Guarantee Act, 2005 (MGNREGA), a legislative enactment of India's constitutional commitment to the right to work (Constitution of India, article 41: "The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want") has the potential to provide immediate livelihood security. See The National Rural Employment Guarantee Act, 2005, The Gazette of India, No. 42 of 2005.

113 domestic workers interviewed for this study reported migrating from source areas for employment in full time domestic work within the last 5 years. Workers described migrating and finding employment with the assistance of a range of actors. These included: kinship networks, agents/subagents, NGOs, trusts, societies, contractors, subcontractors and employers. These actors appeared in narratives from migrant workers in a range of combinations. The following sections describe these actors and highlights common practices. It is significant to note, however, that the boundaries between these categories are not fixed. Workers reported difficulty in distinguishing between the categories: agency, temporary staffing agency, agent, subagent and subcontractor and contractor.

1.1 Informal networks and employment relationships

Of the 113 women who reported migrating for employment in full time domestic work in the last 5 years, including women workers interviewed in source and destination areas, 49 reported migrating through informal networks—including family, extended family, relatives and other known actors. An additional 29 reported that although they took the assistance of other recruitment intermediaries, kinship networks were also involved in the recruitment process. In total, 78 women who migrated for employment in domestic work reported that kinship networks were involved at some stage of the migration or placement process (69.1 percent). Only 35 of the 113 domestic workers interviewed for this study (30.9 percent) reported no involvement by kinship networks at all. These numbers suggest the critical role of kinship networks in internal migration—and the extreme difficulty in sharply delineating recruitment processes that typically involve multiple actors and informal interactions.

Since internal migrants routinely return to their home villages, many respondents reported learning informally, from other women employed as domestic workers, about the nature of employment, salary ranges, working hours and living conditions in destination areas. It is common among domestic workers for women who have already migrated for employment to become involved in recruiting other women from their home villages. As explained by Rajiv Singh, Program Manager at the Srijan Foundation:

People are most comfortable if they migrate with someone they know. Significant migration happens through kinship networks. Relatives and neighbors who return from destination areas are aware of work opportunities and bring their families with them.

For some workers, migrating through agents that intersect with kinship networks creates a sense of security. For instance, one domestic worker from Bihar reported that agents ensured her security and safety by maintaining regular communication after helping her to find full time employment in the Delhi, National Capital Region.

After migrating through kinship networks, domestic workers described finding employment in a variety of ways. In some instances, employers in the areas where they work may inform domestic workers that they are looking for help. Among study respondents, 4 domestic workers described finding employment through networks between employers. Each of these workers migrated with the assistance of kinship networks and sought employment upon arrival in the Delhi-NCR.

Alternately, upon returning to their home villages, employed domestic workers may be approached by women they know and asked for help in finding employment. Established domestic workers may bring women from their home villages when they travel but then refer

these women to other placement actors. Study respondents included 25 workers who reported that they migrated through kinship networks but ultimately found employment through other placement agencies, subagents and contractors. As mentioned above, the boundaries between these categories are not fixed. Many workers reported difficulty in distinguishing between the categories: agency, temporary staffing agency, agent, subagent and subcontractor and contractor.

Women who migrate for employment in domestic work, furthermore, are not always aware of the recruitment and placement channels they will enter when they depart from their homes. Rajiv Singh, Program Manager at the Srijan Foundation explained common scenarios in which women who migrate for employment do not know how recruitment and placement chains may unfold. In one such configuration, women migrate for employment with a woman they know but later find employment through source-area networks and other types of labor recruiters. Singh explained:

When a woman comes back home after working in a city as domestic help, she often takes other girls who wants to join her. In this sense, she acts as an agent. Later, the woman may send these girls to a placement agency.

Pathways and subsequent employment conditions, he explained, may even be uncertain when women and girls migrate for employment with the assistance of family members. For instance, one respondent reported that although she traveled to the NCR from Jharkhand with her uncle, she was ultimately sent for placement in full time domestic work through a placement agency.

I had agreed to look after my nephew while both my uncle and aunt worked. When I came to the NCR, I was also made to cook, clean and complete other domestic work.

They did not pay me or my family. I was isolated from my family. When I began to fight with my aunt, my uncle sent me to a placement agency.

These examples illustrate the fluid and porous boundaries between kinship networks, returning domestic workers who engage in informal recruitment and other labor recruiters. The fluidity and porousness of boundaries that domestic workers must navigate, furthermore, are not confined to the process of seeking and engaging in employment. Domestic workers are held outside the boundaries of labor law and social security protections. The nature of their employment, characterized by personal interactions between workers and employers within the boundaries of employers' homes, requires domestic workers continuously confront unique challenges associated with these informal working conditions. Common challenges include wage rates below minimum wage regulations, extended working hours and reliance upon employer discretion for even the most basic benefits such as regular and sick leave.

1.2 Subagents

Another 19 women reported that subagents—in addition to other placement actors—were involved in their recruitment, migration and placement. These 19 women described complex recruitment chains that included kinship networks and agents/subagents (16); agents/subagents and employers (1); and kinship networks, agents/subagents and employers (2). In total, 44 percent of the 113 respondents who migrated for employment in full time domestic work reported that agents/subagents were involved at some stage in the recruitment process.

According to Pooja Singh from the Srijan Foundation and Jharkhand Anti-Trafficking Network (JATN), migration from Jharkhand through agents has increased exponentially in the last 6-7

years. In Jharkhand, researchers found that recruitment agents typically operate as part of complex recruitment chains. Pooja described a high level of organization among informal agents: *“Agents are organized. Each agent has their work and roles are divided and well defined.”*

Within this system, respondents in Jharkhand distinguished between two types of agents. The first, referred to as *sardaar or sardarni* recruit migrants from a particular geographic area and bring them to Ranchi. These agents, who interact directly with workers and their families are typically younger and may be linked to a chain of agents who supervise and coordinate recruitment. *Sardaar or sardarni* work on commission and are typically responsible for bringing migrants as far as Ranchi.

From Ranchi, workers report engaging with a second type of agent who takes responsibility for both recruiting workers and placing them in destination areas. While these agents do not, in most cases, maintain contractual employment relationships with formal labor recruitment agencies, informal working relations forged by routine interactions between agents and formal recruitment agencies are common.

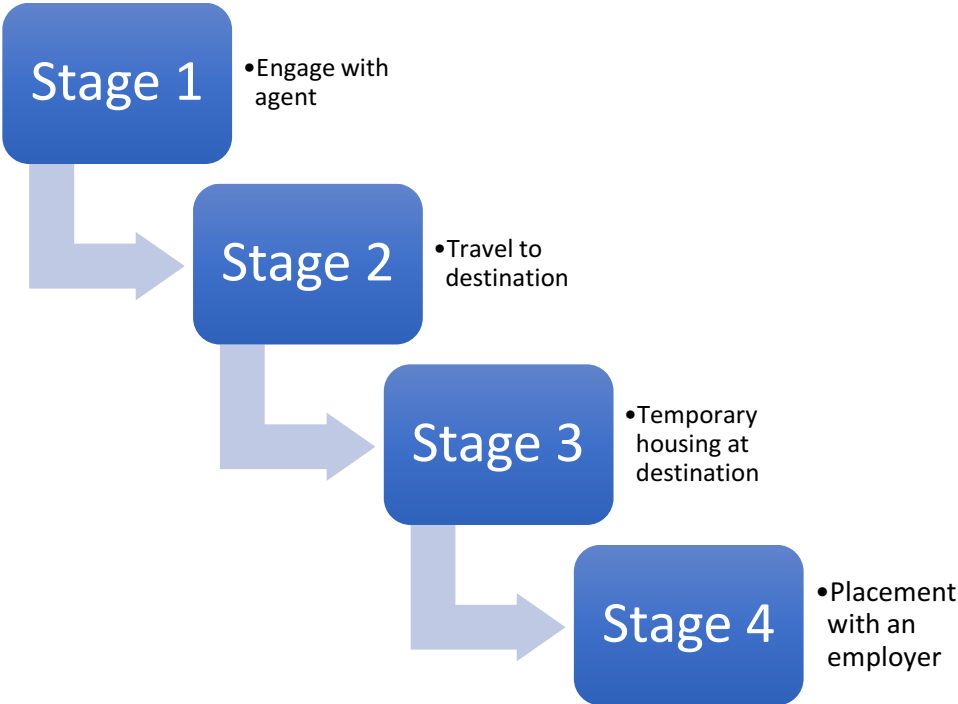
Respondent domestic workers from Jharkhand reported paying local agents between Rs. 5,000 and Rs. 10,000 [USD 77-144]. From this amount, local agents keep at least Rs. 1000 per worker [USD 15.39]. The remainder is transferred to agents and recruitment agencies further down in the recruitment chain, with as many as five distinct actors involved in recruitment processes.

Recruitment agents described paying monthly commissions to local police officers in source and destination areas on commission.

In Bihar, researchers uncovered a distinct model of source area recruitment. In Dihuri village, Gaya district, women and girls who seek to migrate for employment in domestic work approach a woman in the village who provides short-term informal training within her home, including cooking and cleaning. Women workers reported learning to cook and clean in this group environment prior to migrating through kinship networks and with subagents and agents.

Workers who were recruited and placed for full time domestic work through an agent described journeys that can be roughly divided into four stages: engagement with recruitment intermediaries in the source area, transit for employment, brief accommodation in the destination area and finally, placement with an employer (Figure 2).

Figure 2: Stages of migration for women who migrate for employment in full time domestic work through agents or subagents



Stage 1: Initial engagement with recruitment agent

Migrant women workers described seeking employment opportunities or being contacted by labor recruiters located in source areas. For instance, one woman from Bihar, explained her decision to migrate to Delhi for employment in domestic work:

I am from a reputed family but I married an alcoholic. My husband hardly earned and whatever he earned—half was spent on alcohol. In the area where I lived, there was a woman who worked for an agency that provided employment to women like me. We were neighbors. She saw my condition and told me, “there is a lot of money in Delhi, come along with me. You will earn enough doing household chores—cleaning, washing utensils, cooking”. I said to myself, “that is what I do here, I will do the same there.” I took an instant decision to travel to Delhi. I left my one son with my in-laws and took the other one with me to work and earn for our family.

Domestic workers from Gumla, Khunti and Simdega districts in Jharkhand and Sarguja district in Chhattisgarh described seeking out known local recruitment agents within their local villages and in local markets. Due to their ongoing involvement in recruitment and placement among agents, workers know who to approach when they seek to migrate. In Khunti, for instance, researchers found that local shopkeepers routinely act as subagents.

Other women described traveling to larger urban centers to meet labor recruiters. Women from Jharkhand described finding recruitment agents and agencies in Ranchi. Similarly, women from Bihar described meeting recruitment agencies in the larger urban center of Katihar. One Bihari woman worker vividly described the ease of locating agents and labor recruiters in Katihar: *“Dotted across Katihar town and Balrampur block there are numerous offices of agents who promise employment in different industries. We know where to go to find work.”*

In Motihari, Bihar, where it is common for men to migrate to the Delhi, National Capital Region for employment as rickshaw drivers, auto drivers are actively involved in facilitating migration for employment in domestic work. As one woman described: *“If you are looking for a job in domestic work, you can travel from this area with men who work as rickshaw drivers. They know the areas in the city where you can find a job.”*

Some women also reported receiving advances from recruiters prior to migration. In some cases, women take advances directly but in other cases, families may take advances in exchange for placing daughters, sisters and wives. Respondents reported that advances are later adjusted against the salary of the worker. One woman from Bihar described entering into an employment relationship with an agent that was arranged by her family:

My family was paid a sum of money to send me with the agent. I was promised work and my wages were promised to my family. The agent said they would give the wages to my family each month.

This case was not unique. Married women reported instances in which they never had direct contact with an agent. Instead, their husband managed all dealings. Whether negotiated directly by women workers or through male members of their families, none of the women interviewed for this study were given contracts or clear terms of employment from either the recruiter or the employer prior to migration.

Stage 2: Travel to destination/transit for employment

Many domestic workers interviewed for this study reported that they were accompanied by family members or agents for some or all of their journey to destination areas. Some reported traveling with only an escort while others reported traveling with other domestic workers.

Many women, including women who migrated voluntarily, reported being instructed not to speak to anyone during transit to the destination area in order to avoid detection by officials who may suspect trafficking. Saachi Kumari from Chotanagpur Sanskritik Sangh described the common practice among labor recruiters of arranging travel for women in groups but separating them to avoid detection.

CSS was notified that 30 girls had departed by train from Ranchi. They were split up on the train so they were less visible—so it didn't look like a case of trafficking. We spoke to the girls. Those who did not want to go for work, we helped them to get off the train. Some did want to go. We provided them with the information they needed to be less vulnerable when they arrived at their destination.

As illustrated in the example above, the practice of masking migration to avoid criminalization associated with trafficking may be employed irrespective of whether or not women and girls have chosen to migrate of their own volition. This example not only depicts heightened attention to trafficking among law enforcement officials in high migration areas such as Jharkhand; but also, the corresponding adaptation among recruitment intermediaries. Facing laws and policies that criminalize trafficking without protecting the legitimate functions of recruitment intermediaries, labor recruiters adapt by concealing their activities and taking measures to side-step regulation.

Stage 3: Temporary accommodation in destination areas

Upon arriving in destination areas, most full time domestic workers reported that they spent some time within destination areas prior to placement. At this stage, some women reported staying with yet another recruitment intermediary. Most workers reported that they spent only

a couple of days in such accommodations. One woman described the time she spent in the Delhi-NCR prior to being placed as a domestic worker in Haryana:

We were 3 or 4 ladies who traveled with the agent. We boarded the train at night and traveled all night. When we arrived, the agent took us to her own house where her son and his wife lived. She found work for the other three girls first. Then she found me full time work in Haryana. During those 2 or 3 days she paid my expenses. She must have gotten a commission from the employer.

Women interviewed for this study described accommodation ranging from individual home-stays to hostel-like living arrangements where between six and eight women share a room. These larger scale accommodations are referred to by women workers in the Delhi-NCR as “office.” Some women reported receiving basic training on serving and other forms of domestic work while transiting through hostels and “offices.” Workers did not report paying additional charges for accommodation.

Stage 4: Placement with an employer

In the final stage of placement, women report being matched with employers. Many reported that the recruiting agents would sever ties with them at this stage. None of the women interviewed for this study reported entering written contracts directly with their employers.

In other cases, workers described receiving payment directly. In many cases, however, employers paid wages directly to recruitment agents. Women who did not receive wages directly reported reluctance to leave employment situations where they may lose their wages—even in cases rights abuses, ranging from denial of food, threats from employers, confinement and physical abuse.

2. Complex labor recruitment channels in destination areas

Once they have reached destination areas, migrant women may cycle through informal and formal recruitment and placement pathways numerous times as their employment needs change and evolve. For instance, some migrant women workers interviewed for this study reported transitioning from full time to part time employment. One woman described her decision to transition from full time to part time work:

Girls who come to Delhi for the first time prefer to work full time and live in to avoid lodging and food expenses. Soon enough, though, many realize the restriction on movement and the scanty pay. Then, like I did, they search for a few part time jobs. They can earn the money they need without giving up their freedom.

Among study respondents, researchers interviewed 42 women engaged in part time domestic work. This number included 4 workers who reported transitioning from full time to part time employment in domestic work. Typically working between 2 and 4 hours in each place of employment, part-time domestic workers reported negotiating their own terms of employment directly with employers. In general, part time workers finish work within 2 or 3 hours and are able to earn higher wages than full-time workers. Cooking may, however, consume extra time.

As described above, recruitment and placement pathways identified by researchers within the Delhi, NCR and Mumbai include small and medium scale recruitment agencies, informal placement networks and religious-community institutions and networks. The labor recruiters discussed in this section are, in many cases, connected to the interstate networks of informal labor recruiters, subagents and agents discussed in the previous section.

2.1 Small and medium scale recruitment agencies

Small and medium scale labor recruitment agencies described agents and informal networks, within destination areas and stretching into remote migration source areas as indispensable to the recruitment and placement process. The director of a labor recruitment agency who placed domestic workers in the Delhi-NCR explained:

Labor is not easily available—so we go to the villages to find workers. We reach out to workers through our own networks of agents that we employ and we also rely upon workers we have placed to refer other workers who are looking for jobs.

Recruitment intermediaries engaged in identifying workers for employment, often in remote areas where they rely upon their own personal and kinship networks, may not be formal employees of a particular labor recruiter.

In addition to recruitment, training and placement procedures described by these small and medium recruiting agencies included initiatives to successfully match worker profiles with employer needs. For instance, 9 small and medium-sized labor recruiters described providing skill development training for domestic workers, paid for by employers and tailored to fit employer specifications.

In order to facilitate placements that meets the needs of both workers and employers, small and medium scale labor recruiters described employing a range of measures and strategies, including interviews with workers, reference checks and required identity proof to ensure that workers are eligible for employment; interviews with employers including inquiry into the number of family members, rooms to be cleaned and other requirements; and 3-day trial periods to ensure a good fit between workers and employers. For these services, these small

and medium sized recruitment agencies reporting charging recruitment and placement fees charged to employers.

Recruitment agencies in Mumbai also described using new technology to match domestic workers with employers, including online employer surveys and app-based requests for hourly domestic work services. Under the hourly service model, domestic workers are trained by the company to provide a range of specified services. When domestic work support is requested via the mobile cellphone application, rickshaw drivers hired by the company transport domestic workers between these extremely short-term employment stints.

Some small and medium sized labor recruitment agencies in Delhi also described formal contracting processes. Contract provisions governing placement commonly included 11 month contracts, including two compulsory leaves each month (on alternate Sundays) and arrangements to ensure that payment was transferred directly to the worker bank accounts.

Small and medium-sized labor recruitment agencies also discussed challenges associated their role as labor market intermediaries. Challenges raised by small and medium-sized labor recruitment agencies included:

- Attempts by workers and employers to bypass the agency and make independent agreements during trial periods;
- Challenges in placing workers across caste lines;
- Explicitly articulated expectations among employers that they should be able to hire domestic workers at low wages—especially full-time workers;
- Inconsistent wage rates between labor recruiters that erode the ability to request fair wages;
- Requests for underage domestic workers;

- Lack of clear standards and certification systems to substantiate training undertaken by workers in domestic skills;
- Lack of industry standards governing working conditions;
- Stigmatization of labor recruiters by police and other officials and a corresponding inability to seek police assistance in registering workers without excessive commissions;
- Incoherent legal standards governing labor recruiters across states presenting challenges for labor recruiters that operate across state jurisdictions.

Many of these challenges can be addressed by common standards for labor recruiters. Some representatives from small and medium-sized labor recruitment agencies indicated interest in contributing to developing standards for recruitment, training and placement. Others, however, expressed concern that unless these standards are strictly enforced, agencies that adopt standards may be at a disadvantage in competitive recruitment, training and placement markets.

2.2 Informal network-based placement

Researchers found that domestic workers actively draw upon kinship and professional networks to find work in destination areas. 35 out of 42 of part-time domestic workers interviewed for this study—the vast majority—reported that kinship networks were involved in their recruitment and placement in part-time domestic work.

Informal networks may form in the neighborhoods where domestic workers live and work—or in shared public spaces. For instance, in a suburb in Mumbai, researchers visited a public park located near a local church that served as a hub social hub for domestic workers from Jharkhand, Chhattisgarh, Orissa and West Bengal. Many of the women present in the park on

Sundays identify as Tribal-Christians. Most are employed as live-in domestic workers and spend their weekly day off in the park after they attend church services.

Women workers explained to researchers that this park provides them with a space to connect to their friends and unwind. Migrant workers from various states use this space to form bonds, remain informed and learn from one another. As one woman recounted: *“Here, I feel I am not alone in my struggle. My story is one among thousands of men and women.”*

In addition to providing a site for solidarity among workers, the park functions as a clearing house for information about prospective employers and employment opportunities. Women seek, find and use information from other workers to identify households where they may be comfortable working. Workers described preferences for working with families with whom they share sociocultural backgrounds. Accordingly, the park—a meeting place for domestic workers from a range of sociocultural backgrounds—allows workers to identify prospective jobs that have been vetted by domestic workers from similar social, cultural and religious backgrounds.

Workers who sought employment through this informal forum did not describe any system of commission or monetary compensation. Instead, facilitating employment was described as one of many forms of social capital exchanged among workers who frequented the park. Within this informal network, workers are routinely called upon to stand up for one another in times of crisis, including through collective problem solving, facilitating employment and loaning money to other women workers in times of crisis.

2.3 Placement through religious-community institutions and networks

Migrant women workers interviewed for this study described religious institutions as powerful bases for solidarity. Religious institutions in both Delhi-NCR and Mumbai described their role in anchoring and providing resources for migrant communities. For instance, an Assistant Director of a religious institution-based community development center in Mumbai explained:

Migrant workers have multiple vulnerabilities and are exposed to a large array of human rights violations due to their informal status. This center provides migrant workers with support when they are in crisis and institutional backing in a large city.

This particular resource center assists migrant workers in securing identity documents, accessing legal support, achieving adult literacy, facilitating medical check-ups, providing crèche-services at nominal rates and providing family support services—including free marriage ceremonies and family counseling. The resource center also provides a space for migrant workers to gather for cultural celebrations.

Meeting an identified need among workers, the center facilitates placement through private recruitment agencies and informal networks. The Assistant Director of the center described referring domestic workers to a trusted private employment agency. He also noted that local employers often inquire about finding domestic workers through the center. In such instances, the center provides domestic workers with information about these vacancies. The center reported, however, that they are not remunerated for facilitating this information.

A religious-based recruitment center in the Delhi-NCR also described providing holistic services to migrant domestic workers. In this case, the church actively engaged in facilitating employment for domestic workers. Contracts between domestic workers and employers were prepared and

reviewed by this training center and included provision governing wages, hours and weekly Sunday leave.

Religious institutions in Jharkhand and Chhattisgarh also engage in recruitment and placement, especially of live in domestic workers. However, due to challenges in interviewing live-in workers, researchers did not take any direct accounts from workers who migrated through such organizations.

Part VI: Transparency, accountability, and responsive regulation

How can new legal frameworks encourage recruitment practices that protect the interests of both workers and employers in informal markets? Instead of criminalizing recruitment intermediaries and providing these market actors with incentives to side-step regulation, new legal frameworks should recognize labor recruiters as legitimate service intermediaries and promote contextually responsive licensing, certification, monitoring, and enforcement.

This proposed turn from criminalization to certification is in line with shifts within the International Labour Organization (ILO) toward allowing the operation of recruitment intermediaries—referred to as private employment agencies (PrEAs)—while protecting workers using these services. In 1997, the ILO Private Employment Agencies Convention, 1997 (No. 181) replaced the Fee Charging Employment Agencies Convention, 1949 (No. 96). A primary focus of Convention No. 181 is to encourage effective operation of PrEAs and temporary work agencies. While transparent recruitment practices require similar legal regulations and enforcement strategies across gender, accountability and responsive regulation should attend to the

particular challenges women workers may face in securing accountability for rights violations and informing regulations.

Transparency

Notably, Convention No. 181 promotes transparent recruitment practices. Preventive regulatory measures include licensing, certification, registration, and standards of ethical recruitment. Prescribed codes of conduct include proactive steps to ensure that workers are matched with employers that uphold core international labor standards pertaining to freedom of association and collective bargaining, minimum wages, working hours, occupational health and safety, and social security.

Under Convention 181, PrEAs are also required to take measures to prevent workplace discrimination. Extending this obligation, the ILO Private Employment Agencies Recommendation, 1997 No. 188, which came into force in May 2001, requires competent authorities to prohibit unfair advertising practices and offers of employment that directly or indirectly result in discrimination on grounds such as race, color, sex, age, religion, political opinion, national extraction, social origin, ethnic origin, disability, marital or family status, sexual orientation or membership in a workers' organization.

Accountability

Accountable recruitment practices require multiple dimensions of accountability: between worker and intermediary, employer and worker, intermediaries and regulatory authorities, and employers and intermediaries. Convention No. 181 addresses many of these dimensions. As described in the previous section, Convention No. 181 calls for proactive steps among

recruitment intermediaries to prevent recruitment discrimination and workplace rights violations. Convention No. 181 bolsters accountability channels by requiring PrEAs to investigate complaints by workers in cases of workplace rights violations. In order to promote accountability between intermediaries and regulatory authorities, monitoring practices under Convention No. 181 include mandatory periodic reporting by PrEAs and inspection of licensees. Under Convention 181, these mechanisms are enforced through actions against illegal recruiters, liability provisions, and sanctions.

In addition, accountability requires proactive measures to equip all stakeholders with the information required to understand and enforce robust regulatory standards. Legal education initiatives should be accessible across language barriers and attend to the specific, intersectional challenges facing women, migrants, racial minorities, and other social identity categories at heightened risk of recruitment and workplace violence. Legal education initiatives that extend to the community level, moreover, have the potential to address stigma associated with migration and support migrant women to report rights violations.

Responsive regulation

In framing regulatory frameworks governing recruitment law makers should consider and respond to the perspectives of the diverse actors involved in recruitment and placement. Informal markets, recruitment pathways, and employment relationships are varied across sectors and geographies. Accordingly, laws regulating recruitment require specific local and sectoral engagement in order to include the perspectives of workers, labor recruiters, and employers.

Social dialogue processes aimed at framing locally relevant standards should take measures to include informal sectors workers from marginalized communities. For instance, recruitment codes of conduct for sectors with high concentration of women workers should be informed by the lived experiences of women workers. These nuanced, situational insights are a critical counterweight to discourses that victimize and stigmatize women workers.

Finally, to promote regulation that is not only responsively drafted, but also responsive in practice, branches of the judicial system charged with enforcement, including police, public prosecutors, and judicial officers should be sensitized to distinguish between mutually beneficial recruitment relationships and human trafficking.