

BRIEF REPORT

Baseline Assessment

AWARENESS ON LAW AND ACCESS TO REMEDY FOR WOMEN MIGRANT WORKERS IN GARMENT SECTOR IN THE CONTEXT OF BUSINESS AND HUMAN RIGHTS

LEAD PARTNER



CSO PARTNERS




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List of Abbreviations

BHR	Business and human rights
BRR	Business responsibility report
BRSR	Business responsibility and sustainability report
CAPI	Computer-assisted personal interview
CII	Confederation of Indian Industry
CMIE	Centre for Monitoring Indian Economy
CSO	Civil society organization
CSR	Corporate social responsibility
EPF	Employee Provident Fund
ESI	Employees' State Insurance
FGD	Focus group discussion
GBV	Gender-based violence
GC	General category
GDP	Gross domestic product
GLU	Garment Labour Union
HRDD	Human rights due diligence
IC	Internal committee
ILO	International Labour Organization
KII	Key informant interviews
MGNREGS	Mahatma Gandhi National Rural Employment Guarantee Scheme
MGNREGA	Mahatma Gandhi National Rural Employment Guarantee Act
NAP	National Action Plan
NCR	National Capital Region
NGO	Non-government organization
NGRBC	National Guidelines on Responsible Business Conduct
NHRC	National Human Rights Commission
OBC	Other Backward Class
OECD	Organisation for Economic Co-operation and Development
PDS	Public Distribution System
PMJDY	Pradhan Mantri Jan-Dhan Yojana
PoSH	Prevention of Sexual Harassment
RBC	Responsible business conduct
RMG	Ready-made garment
SC	Scheduled Caste
ST	Scheduled Tribe
UNCHR	United Nations Commission on Human Rights
UNDP	United Nations Development Programme
UNGP	United Nations Guiding Principles on Business and Human Rights

Background

In the context of COVID-19 pandemic and the socio-economic fallout that has followed in its wake, there are increased calls for a renewed commitment to decent work, environmental protections, rights to land and livelihood, and the rights of migrants, women and indigenous peoples, under the framework of the **UN Guiding Principles of Business and Human Rights (UN Guiding Principles/UNGPs)**.

Widely recognized as the world's most authoritative, normative framework guiding responsible business, the UNGPs outline the roles and responsibilities of government and business to prevent and address human rights abuses in business operations. Among other things, the UNGPs provide that both government and business should ensure access to remedy to those individuals and groups that have suffered adverse impacts on their human rights in the context of business operations. Under the **third pillar of the UNGPs, access to remedy** it involves a range of remedies and processes including judicial and non-judicial processes.

The EU-supported, *Business and Human Rights in Asia: Enhancing Sustainable Economic Development under the Protect, Respect and Remedy Framework* (B+HR Asia) programme facilitates the implementation of the UNGPs in 6 countries in Asia including, India, Indonesia, Malaysia, Myanmar, Sri Lanka and Thailand. Enabling Sustainable Economic Growth through the Respect, Protect and Remedy Framework (B+HR Asia) is a joint action of the European Union (EU) and the United Nations Development Programme (UNDP). The action promotes and facilitates the implementation of United Nations Guiding Principles on Business and Human Rights (UNGPs), and in the process, contributes to better human rights conditions, inclusive economic growth, and environmental sustainability. In India, B+HR Asia is collaborating with the government in the development of a **National Action Plan on Business and Human Rights (NAP)**, promoting greater awareness among business of Human Rights Due Diligence practice, and supporting Civil Society Organisations (CSOs) to raise awareness of the UNGPs, and to provide direct support to vulnerable groups adversely impacted by business operations.

UNDP, thus, is in partnership with Change Alliance Private Limited (CAPL) to implement its project on working with right holders (particularly women and indigenous communities) severely impacted by COVID-19 pandemic, facing loss of employment, livelihood, housing, social protection, compromised participation in legal fora, etc, and planning a range of activities including awareness generation, providing access to social, legal and protection measures, and support for livelihood. **This project has its emphasis on innovative approaches relating to greater awareness and access to remedies for right holders' subject to adverse human rights impacts within the context of business and human rights narrative of India.**

Purpose of the Project

The current project of the UNDP on devising innovative approach on awareness and access to remedy for women migrant workers is an attempt to reach all key stakeholders to promote **Business and Human Rights (BHR)** and, in particular, in the context of women migrant workers. The project aims to study as well as mitigate the adverse impact of COVID-19 on the poor and marginalized sections of society through BHR awareness and supporting mechanisms of livelihood and employment opportunities. The project achieves its objectives broadly through a baseline assessment of target population (women migrant workers) and interventions in the form of a series of activities.

In the course of translating UNDP's goals to project outputs, CAPL has reached out to women migrant workers, a highly vulnerable group of right holders, employed in India's vast garment sector. Taking an approach of engaging all the influencers and stakeholders affecting the Business and Human Rights aspects of these women migrant workers, the project also closely engages with garment sector factories, brands, civil society organisations and the government.

The choice of garment sector and its stakeholders as focus of the project was an outcome of reported cases of neglect of human rights, gender-based violence and inadequate social security provisions in many of the factories. The sector, employing no less than 60% of women as part of its workforce, has remained a concern for business and human rights advocates. In addition, the sector was one of the hardest hit by COVID-19 pandemic. A number of garment factories were unable to manage the cost implications arising out of cancellation of orders and could do little to support their women workers economically, pushing them into increased poverty and uncertainty over the future of their families.

The project has been under **implementation during January–September 2021 for women migrant workers from the origin states of Jharkhand, Uttar Pradesh (UP) and Bihar**, from where migration takes place, and the destination states of Delhi/National Capital Region (NCR), Jharkhand and Tamil Nadu, where the women migrant workers were or are employed.

The project aims to achieve the goals outlined above through the following key components:

- i) Baseline assessment of COVID-19's impact on women migrant workers in the aforesaid locations, and pertinent recommendations aimed at influencing policies and actions, and applying a gender lens in the course of engagement
- ii) Innovative approaches in aiding recovery, with emphasis on legal grievance redressal, reskilling and employment
- iii) Promotion of constructive dialogue with media and businesses about the issues faced by rights holders in the context of business and human rights

This brief is a synopsis of the full baseline assessment report, and it provides concise findings, recommendations, and conclusions of the recently concluded baselines assessment study under this project.

Significance and Overview of Baseline Assessment Under the Project

Business and Human Rights (BHR) is at the heart of this baseline assessment study, which is a key deliverable in the project. From a BHR as well as gender lens, it comprehensively covers women migrant workers' recruitment process, safety, working conditions, grievance redressal mechanisms, working and living conditions. In addition, the impact of COVID-19 has been amply covered in the survey process.

This baseline assessment was integral to the objectives of the project to advocate and reach out to key stakeholders for improved business human rights for women migrant workers in the garment industry. Accordingly, baseline assessment's focus was to explore the perspectives of migrant women workers in the garment industry and, in the specific context of COVID-19, and its impact. The baseline assessment captured responses on migration trends including current recruitment practices, working conditions, grievance redressal mechanisms, gender-based violence, the specific impacts of COVID-19 and provision of social protection schemes.

The baseline assessment study was designed to engage with a wide range of stakeholders during the baseline assessment including migrant workers, suppliers, brands, industry associations, labour organizations, and NGOs to analyse and arrive at a holistic assessment of the challenges and vulnerabilities faced by women migrant workers in the sector, applying varied

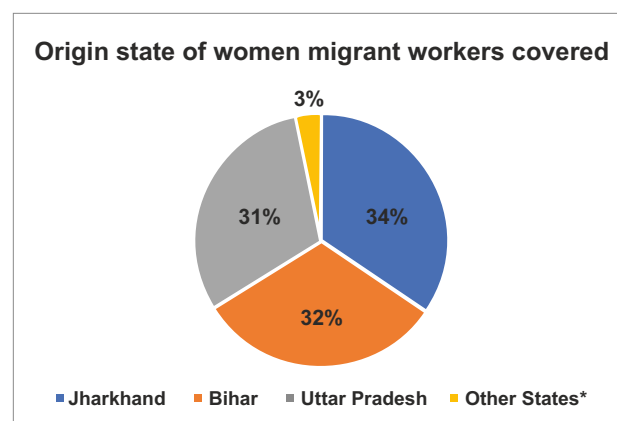
data collection tools including both quantitative and qualitative methodologies.

Recommendations have been developed as part of the baseline assessment with the benefit of responses and inputs from all the stakeholders who were part of the assessment, by referring to standards and frameworks, and considering the context and prevailing status of business and human rights in India.

Survey Population, Process and Methodology

The baseline assessment was conducted with respondents (women migrant workers) originating from Jharkhand, Uttar Pradesh and Bihar

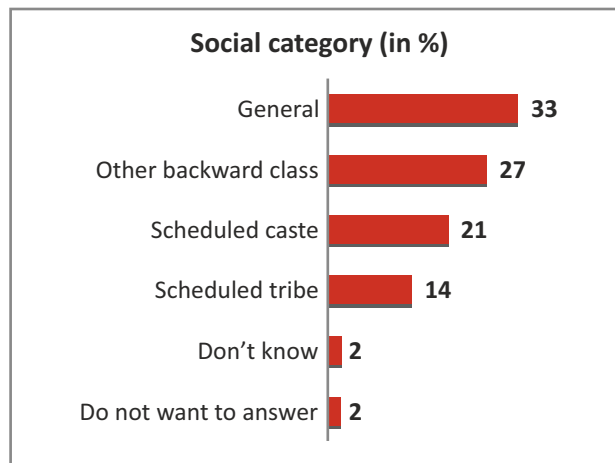
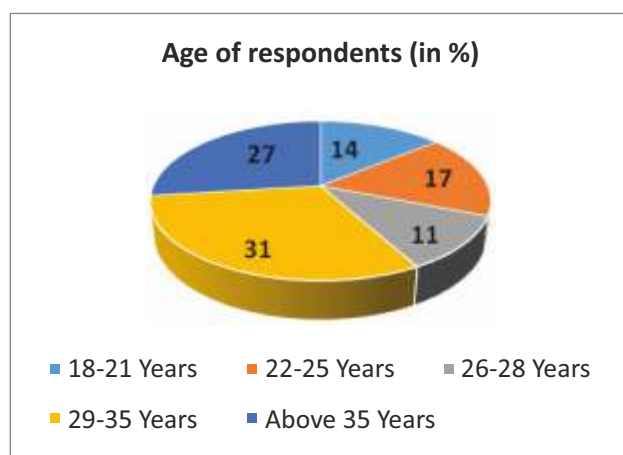
- 662 women migrant workers were interviewed for this assessment
- Majority (34.4%) of the migrants came from Jharkhand, 31.7% from Bihar and 30.5% from Uttar Pradesh (UP).



- Just over 3.4% of the respondents were migrants from other states (West Bengal, Assam, and Odisha)
- All migrants were from garment factories at the destination states of Jharkhand, Tamil Nadu and Delhi-NCR. Jharkhand, also happened to be both the origin and destination state for many respondents, on account of intra-state migration.

The sample for carrying out the survey was drawn from socially excluded communities, especially tribal community of Jharkhand and vulnerable communities from Bihar and Uttar Pradesh who were working or had worked in garment factories.

More than 70% of the respondents belonged to the age group of 18-35 years and more than 60% respondents were from Scheduled Tribe (ST), Scheduled Caste (SC), and Other Backward Class (OBC), social categories. Almost half of the women had an education of middle school or less, while a sizeable 31% had Studied up to primary level, and many had no formal schooling. The respondents profile clearly indicates that these women migrant workers with intersection of young age, low education, gender, and social category, were a highly vulnerable group.



Detailed indicators for baseline assessment ('baseline indicators') were developed for preparing the survey questionnaire for quantitative and qualitative research. The baseline indicators were developed based on literature review, and by referring to **United Nations Guiding Principles (UNGPs)**, **Organisation for Economic Co-operation and Development (OECD)**, **International Labour Organisation (ILO)** and **National Guideline on Responsible Business Conducts (NGRBCs)**. The research process was aimed to achieve the following key objectives:

- To assess the **impact of COVID-19 and access to social protection schemes and safety nets** for the women workers of garment sector and understanding whether the existing human rights protections and remedial mechanisms provide adequate safety nets to address the crisis emerging out of COVID-19.
- To explore **recruitment processes, working conditions, awareness and access to remedy** for migrant workers in the garment sector, with a focus on women migrant workers and to understand the constraints, vulnerabilities and needs of the key stakeholders of the sector.
- **Provide recommendations** for suppliers, buyers, communities, CSOs and government in alignment with protect, respect and

remedy principles as outlined in the UN Guiding Principles, and to cohesively address human rights concerns of the women migrant workers.

Mixed method comprising of both quantitative and qualitative research methods were used to collect data. Based on a standard statistical methodology, a sample of 600 women factory workers was targeted to be covered across the target states (Delhi/NCR, Jharkhand and Tamil Nadu) for primary quantitative survey. Eventually, data was collected from 662 women migrant workers.

Qualitative research, comprising of the following three approaches, was administered with key stakeholders in Jharkhand, Delhi/NCR and Tamil

SL. No	Qualitative Interviews	Target	Achieved
1	Key In-depth Interview (KII)	18	22
2	Focus Group Discussions	18	21
3	Case studies	10	10

Nadu. The process for qualitative research was conducted concurrently with quantitative research.

- a) Focus Group Discussions (FGDs) were conducted with 21 groups of women migrant workers (21 FGDs against a target of 18) in both source and destination areas covering approximately a total of 130 women migrant workers.
- b) In-depth interviews (Key Informant Interviews) were conducted with 22 key respondents (against a target of 18) which included factory managers, brands, unions, labour rights organisations, industry associations, issue experts, key community leaders (having influence on community and village level functionaries) and government officials
- c) In-depth case studies (10 case studies), were prepared, focused on women migrant workers from both source and destination areas.

Key Findings of the Baseline Assessment

The current baseline assessment has been a fact-finding exercise in order to build greater awareness and create access to remedies for women as rights holders. The women were current or former workers in garment sector, which qualified as the right industry for a number of reasons. The suppliers (factories) in garment sector employ a large number of women migrants from highly vulnerable sections of society. The sector has a history of issues around business and human rights (BHR) and has been struggling to come to terms with business interest vs rights. Finally, the sector faced the brunt of COVID-19's impact leading to cancellation of orders, shut-down of factories and wide-scale layoffs.

The findings from the baseline assessment come as a wake-up call to garment suppliers where the women are employed; brands which determine the business and sourcing, and government which is responsible for both the policies aimed at upholding welfare of workers, and also their implementation. Various studies have already shown the plight of women workers in the sector. While their conditions were already deplorable, COVID-19's impact on the sector and its workers has further made it worse for them. Factory workers, largely women who were already struggling to meet their ends, have been the worst affected. Women migrant workers, by and large, have been neglected by all stakeholders.

The current project of UNDP has a clear-eyed approach to sensitizing the stakeholders about the problems faced by women migrant workers

in garment sector in the context of BHR. The project will attempt to use the findings of baseline assessment to engage closely with stakeholders to develop ownership and a sense of accountability towards a sustained, collective effort in bridging the gap between plans and concrete actions.

The survey process covered all the various aspects of workers' rights including their working conditions, socioeconomic situation, wages, impact of COVID-19 on them and their families, grievance mechanism available to them at work and recruitment practices followed by employers.

We bring out below the key highlights from the survey.

1. COVID-19 has worsened the conditions of the migrant workers and has exposed the existing vulnerabilities of the garment sector more prominently. Lack of social security measures, awareness, difficulty in accessibility due to complicated process of documentation, non-payment of wages, lack of support mechanism by government and neglect of basic rights of workers by industry created major suffering for the women migrant workers.
2. A number of respondents (42%) mentioned that they did not receive any written employment contracts. Wage is decided by the companies or agents which is then communicated to the workers. Rarely do

workers get the opportunity to negotiate the wages. Schemes like EPF, ESI or schemes for migrant workers reach less than 10% of migrant workers. Workers also received limited access to social security schemes, for example, public distribution system (PDS).

3. COVID-19 pandemic has resulted in greater hardship for migrant workers due to non-payment of wages, excessive working hours, retrenchments, traveling all the way back to their home states in adverse circumstances (large number of migrants had to walk long distances with their families and children facing deplorable conditions). Respondents have continued to face anxiety due to COVID-19 and its uncertainties, fear of losing their livelihoods and jobs, and pressure of repayment of loans.
4. Women migrant workers, in certain cases, have shared concerns over inadequate provision of toilets at workplaces, lack of separate medical rooms for women, difficulty in managing in local language and restriction on going out of their hostels.
5. Workers who came with their families and children faced more hardships, as government schools offered education in the local language. Migrants also do not, at times, possess identification documents, which makes it harder for them to prove their identity and residency.
6. Interviews with various stakeholders highlighted that there were no systems in place to ensure safe and fair migration practices. This was particularly evident during COVID-19, when provision of social security schemes largely did not consider the needs of the migrant population. Many individual state governments tried to bring their migrants back to their states and did provide for some assistance. For example, the State of Jharkhand launched a dedicated help desk

and portal, for helping the workers of Jharkhand to return to Jharkhand safely, and to gain access to schemes meant for them. Yet, measures adopted by various states were quite inadequate and did not consider the needs and problems faced by women migrant workers. In addition, too little attention was given to promote safe migration. However, Civil Society Organizations and workers' collectives/unions played a very important role in enabling workers to access government social security schemes during COVID-19 pandemic.

7. Social security schemes at workplace were also not accessible to workers. Almost half of the respondents who were eligible for maternity benefits said that factory did not provide any maternity benefits. One of the findings on issues of workplace safety for women is that many of them were not aware of the committees formed under Sexual Harassment of Women (Prevention, Prohibition and Redressal) at Workplace Act 2013 (commonly known as Prevention of Sexual Harassment (PoSH) at Workplace Act 2013. They are not aware of the laws related to sexual harassment at workplace, hence only few cases were raised. Women workers were also not aware of the grievance redressal committees. Many respondents (53%) were not aware of the existence of Internal Committees and their function in the factories. Similarly, close to half of the respondents (46%) were also not aware about any presence of a Complaints Committee.

Overall, it was evident during the baseline survey that the women migrant workers' understanding of their workplace rights was limited to getting paid in accordance with oral and written contract, and they had not been sensitised by their employers about their basic rights provided under constitution or stipulated labour or factory laws. It is hard to also overlook that their rights have been effectively undermined in part by the State as well, due to insufficient

engagement of State with employers and other key stakeholders on the issue of BHR.

Garment sector brands and suppliers, both, were unable to develop support mechanisms for their workers or take responsibility for their well-being, given that these workers were the backbone of their business for decades.

Fundamentally, workers have been treated just as a factor of production - as labour - and little else by brands, buyers and factories. It is also true that there are considerable gaps in the regulatory instruments, mechanisms of interaction between regulators and businesses, and engagement of businesses with workers. Garment sector has

always widely claimed about providing jobs to millions of women, which is indeed true. Yet, paradoxically, the women are deprived of their basic rights at workplaces, including and not limited to concerns of personal safety and dignity.

COVID-19 has further established that the garment sector is ill-prepared to provide any meaningful support to women migrant workers during times of need. BHR assumes urgent significance in defining proper policies and measures for the fair treatment of workers with shared accountability amongst all key stakeholders, including government, manufacturers, brands, and buyers.

Recommendations

We have proposed a series of steps that can be adopted by policymakers, brands and factories which would not merely serve the purpose of making the workplaces more humane but will also ensure long-term sustainability of the supply chain of garment sector. Recurring issues of low safety of buildings, abuse and harassment of women, unwarranted restrictions on liberty and not giving workers their due at least by complying with laws could have long-term implications for the supply chain itself.

The recommendations have been considered from two perspectives; **a) set of guidelines for key stakeholders, and b) an approach based on the evolving National Action Plan (NAP) landscape in India.**

a) Garment sector guidelines for the well-being of workers, in particular women migrant workers

Government

1. Strengthen capacity and reach of nodal departments and in particular the Inspector of Factories, to enforce compliance of laws and regulations stipulated for the factories, while giving due consideration to government's efforts to strengthen garment sector's performance and on ease of doing business
2. State labour department can take the lead and promote ownership amongst factories of the issues related to welfare of women

migrant workers by organising a quarterly joint meeting of factories, factory inspectors, representatives from all nodal departments concerned with women and factories, State Women Commission, representatives of International Labour Organisation (ILO) and brands. Minutes of the Meeting must be drawn with action points and mechanisms must be agreed between parties for follow-up actions.

3. Demand an annual report from factories on compliance of applicable laws and specific information related to women employees—including wages, treatment, complaints, basic facilities, health issues and harassment
4. Work with other governments and leverage international platforms to ensure that sourcing and procurement practices of brands do take into account human rights issues while engaging with factories in India and other countries, thus enabling countries with a better human rights track record to have a competitive edge

Factories

1. Constitute and strengthen internal committee, ensuring representation of expert and inclusive representation to understand and address the issues concerning women in an open, safe and unbiased environment. The outcomes of the meeting must be shared openly with

all staff, including brands the factory is associated with.

2. Promote active engagement with other factories, in the form of a coalition, to represent issues concerning profit margins, legal compliances, work order processing and need for investments for welfare of women workers, and make joint representation to brands and buyers
3. Revisit productivity improvements through innovative and incentivising approaches, instead of resorting to coercion and exploitative practices, or any form of unhealthy competition amongst women workers
4. Create policies and practices for zero-tolerance to noncompliance with laws of the land applicable to factories and employment
5. Ensure that the top management conducts town-halls, at least once a quarter, to directly address the issues and grievances of women migrant workers.

Brands

Both Indian and multinational brands (including retailers and buyers) have adopted a number of voluntary initiatives focused on sustainability and corporate social responsibility (CSR), including social audit of their factories which covers aspects of human rights applicable to workplaces. However, such audits must explicitly demand evidence of full adherence to laws applicable to the factories. It has been noticed that social audits or codes of conduct are geared to building the image of the brands as socially conscious, but they fail to hold the factories accountable for their human rights practices. In addition, brands give less attention to human rights issues or environmental impact in comparison to profit maximisation.

Human impacts in the supply chains of the garment sector is a serious matter and have led to serious life-endangering incidents. It is time for brands to take more concrete steps and realise that they have at least equally, if not largely, contributed to the problem by making factories and countries compete on low costs and unrealistic timelines.

1. The single biggest differentiator would be a more enlightened purchasing and sourcing practices of brands giving balanced priorities to pricing, productivity and human rights. Brands need a strong resolve in addressing this prime concern in their supply chain.
2. Brands across the board, including in India, need to come together with a decisive action to allow for sufficient margins for factories to pay decent wages, be fully compliant with laws and ensure that they are not compelled to take short cuts merely for survival.
3. It follows that brands engage with their factories to ensure they invest in people and facilities which lead to improved practices at workplace both from human rights and safety perspectives. Brands must also ensure that this aspect is integrated in their social audits of their factories.
4. Make it a part of all contracts and orders that violations of human rights, unfair treatment, harassment, inadequate facilities and non-compliance with laws will lead to cancellation of orders as well as notifying the factory as non-compliant with all other brands as well.
5. Make a provision for a grievance mechanism or point of contact, directly accessible for any worker or employee, for raising social impact or human rights issues.

6. Develop a recognition platform for factories with best performance in human rights
7. Incentivise, monetarily, companies that show positive outcomes on employee welfare, especially for the women workers.
8. Work with their own government where the brands are based to develop tax and pricing structures which help in protecting margins of the brands without having to resort to rampant undercutting of critical costs in the supply chain

Civil Society Organisations (CSOs)

The biggest role of CSOs is to ensure that all the key stakeholders (government, buyers, industry federations and suppliers) agree on full compliance of laws by factories and ensure an evolved workplace that respects human rights and, health and safety standards. The adherence of factory management to regulations will depend on the kind of intervention CSOs adopt, who are in a position to take up awareness, advocacy, research and documentation.

1. Gaps in all aspects relating to the living and working conditions of migrant workers will have to be effectively highlighted by CSOs, who need to take up these issues with governments, policy makers and factory management so that appropriate and timely measures are taken.
2. At present, there are potentially quite a few key interventions that can be considered by CSOs. These relate to hiring of workers, strengthening complaint mechanisms, linking workers with social security benefits, nurturing women-friendly working conditions, adherence to all requirements of the Factories Act, Contract Labour Act, etc.

3. Engage with factory management on the latest developments and initiatives taken in other countries regarding the human rights of women workers and the implementation of related policies.

b) NAP mandate

It is the State that is ultimately responsible for the protection of the rights of its citizens. Towards this end, the NAP does appear to be the right conduit to pressing the button on human rights issues. An overarching and explicit purpose of this project is also to contribute to the NAP's priorities in addressing issues of human rights violation involving businesses.

The recommendations from the findings of the baseline assessment are categorised as follows:

- Protect (Pillar 1: The State duty to protect human rights),
- Respect (Pillar 2: The corporate responsibility to respect human rights)
- Remedy (Pillar 3: The need for greater access to effective remedy)

Further, the recommendations are divided into four major themes based on the findings of the baseline assessment:

1. Recruitment practices
2. Social protection and social security measures
3. Working conditions
4. Safe migration and safe working environment for women

Pillar 1: The state duty to protect human rights (Protect)

Recruitment practices

1. Ensure that forced migration does not happen from villages and that economic

conditions are not so pitiable that people are forced to abandon their lands and families for survival.

2. Migration should be voluntary and driven by aspirations rather than being distressed. Women migrant workers should be linked to alternate employment opportunities in the form of MGNREGS and other livelihood schemes in their origin states. The required work days under MGNREGA should be available with proper payment mechanisms.
3. The Inter-State Migrant Workers Act, 1979, which now comes under the Occupational Safety, Health and Working Condition Code 2020,¹ should be implemented and be functional with a special focus on addressing issues of trafficking and women's recruitment.
4. Mandate recruitment only through verified centres like Pradhan Mantri Kaushal Vikas Yojana (PMKVY) and Deen Dayal Upadhyaya Grameen Kaushalya Yojana (DDU-GKY) with standardized processes for verification of documentation (Aadhaar card, ration card) etc. There should be deployment of women officers and supervisors to verify migrant workers' recruitment process.
5. Make arrangements for travel and short-term accommodation for migrants in destination states. Transit homes with safety and security for women migrant workers can be helpful here.
6. Signing of bilateral/multilateral agreements between the responsible nodal bodies of the states is a way to mitigate the informal nature of recruitment between states.

7. Registration of women migrant workers in both source and destination states is important.
8. Make it mandatory for third-party employers, including contractors and recruitment agents, to register with the government.
9. The State has a role in building a bridge between factories and workers, in training and skill building of workers for better equipping them to understand and meet the skills requirements of factories.

Social protection and social security measures

1. Ensure that workers get their social security benefits and that factories comply with the Factories Act (including the new Occupational Safety, Health and Working Conditions Code, 2020) and other legislations relating to employment of contract workers, etc.
2. Run awareness-raising campaigns for women migrant workers on social protection schemes.
3. Collaborate with CSOs who are in a strong position to deliver services on behalf of the stakeholders in the form of awareness, sensitization, linking with social protection schemes and support.
4. Practice registration of migrant workers in their origin states and facilitate their safe migration with relevant documents to claim their rights.
5. Create provision for temporary ration or identity card to access Public Distribution System (PDS) services in destination states. There must be social security coordination through bilateral/multilateral agreements between states of origin and destination for smooth functioning and accessibility of these

¹The 2020 Bill provides that women will be entitled to be employed in all establishments for all types of work. It also provides that in case they are required to work in hazardous or dangerous operations, the government may require the employer to provide adequate safeguards prior to their employment. <https://labour.gov.in/whatsnew/occupational-safety-health-and-working-conditions-code-2020-no-37-2020>

measures. Enforcement of legislation and implementation of the same are important steps.

6. State and local authorities should check for forced labour indicators and freedom of movement and right to return. They should also maintain tracking of migrant workers for the initial 3–6 months in destination states to ensure smooth transition.

Workplace conditions

1. The state labour department needs to ensure that all factories/companies are brought under the ambit of labour laws and state social security and protection schemes, and should ensure that women workers are able to access these schemes.
2. The State should ensure that women's rights and benefits are protected and that there is no exploitation, either explicit or implicit, in factories by establishing a proper monitoring mechanism.
3. There should be proper and timely verification of all the labour codes, including the health and safety of workers, ensuring minimum wages, no harassment and abuse, addressing excessive working hours and non-payment of wages, forced labour, freedom of association and collective bargaining, ensuring access to social protection and security.
4. There should be healthy and safe living and working conditions, mandatory provision of hygienic toilet facilities, food and drinking water facilities, and proper breaks. The State must ensure that migrant workers have access to housing and accommodation and other social security schemes.

5. Seek annual reports from garment factories regarding legal norms followed for workers.
6. Strengthen implementation of the prevention of sexual harassment (PoSH) at workplace Act 2013 and Internal Committees (ICs) for prevention, prohibition and redressal.

Safe migration and safe working environment for women

1. The State should take up greater engagement through policy interventions, as well as training and capacity building through its institutions to align factories with the broader national and international human rights and gender equality initiatives
2. State must ensure that factories establish functional childcare/day care facility within the factory premises preferably or nearby.
3. Make provision for hiring Hindi speaking teachers and approve Hindi as a subject in government schools (besides local languages of the state).
4. State should develop standard procedures for recruitment and proper treatment of migrant workers in terms of dignity and freedom.

Pillar 2: The corporate responsibility to respect human rights (Respect)

Recruitment practices:

1. Fair, ethical and legal recruitment practices should be followed. The agents/contractors and placement agencies who are recruiting on behalf of companies/factories should be verified by the company/factory management about their authenticity while recruiting women migrant workers. Company staff responsible for women migrant workers should preferably be women.

2. Standardized employment contracts should be used by companies (this is a formal contract, including details of work hours, wages, benefits, social security, grievance handling related to harassment, abuse and trafficking, and employment benefits).
3. Suppliers should monitor whether the women migrant workers have been registered under the state.
4. Suppliers must maintain open communication and strong networking with state authorities and labour departments, and if they notice illegal activities, they must report these to the state authorities.
5. Women, and in particular migrant women, are at a disproportionate risk of facing abuses in recruitment and placement, and hence creating more awareness and disseminating information through Information, Education and Communication (IEC) kits is essential at both origin and destination locations.

Social protection and social security measures

1. Buyers and suppliers should ensure that women migrant workers and their families have access to basic social security guarantees in the state where they reside, as well as in their home state.
2. Collaborate with CSOs for awareness generation and linking women workers to social protections schemes.
3. Suppliers should support women workers to provide access to government schemes and programmes.

Workplace conditions

1. Factories employing contractual labour need to have more oversight of the working of contractors, so that they pay workers on time, at required rates, with all social security provisions in place.

2. Ensure payment of wages with paid leaves for COVID-positive patients and provide health insurance and strengthen ESI hospital services. Introduce free testing and vaccination in factories with either government support or the support of brands and suppliers.
3. Provide maternity benefits, including leave, payment of wages, breastfeeding breaks for working mothers, and proper, healthy and hygienic childcare crèches in the factory premises.
4. Strengthen Internal Committees and grievance committees through strong stakeholder engagement.
5. Promote women workers to supervisory and senior roles through training and skills development.
6. Encourage women workers to engage with unions and women's collectives

Safe migration and safe working environments for women

1. Ensure that women workers are recruited only through safe and reliable migration sources and agencies.
2. Provide safe transportation facilities for women from homes to workplaces.
3. Provide proper hostel and accommodation facilities.
4. Factory management needs to focus on training and awareness programmes on PoSH guidelines every year, which should be mandatory for every employee (both women and men).
5. Posters and other information material should be readily available in the workplace to provide information on PoSH and the IC, with details of members and the process of complaints and punishment.

6. ICs should have representation from credible and strong CSOs from diverse groups and with an understanding of diverse cultures and languages, to encourage and build trust among women migrant workers.

Pillar 3: The need for greater access to effective remedy (Remedy)

1. Recruitment practices

- i. States that employ migrant workers should establish linkages with sourcing state governments and sign agreements to ensure safe migration. There should be a provision for the women's cell and the migrant cell to work in tandem from the origin state of the women migrant workers to address issues of harassment and abuse and ensure safe workplaces.
- ii. Inspection of recruitment violations related to gender-based violence should be reported and addressed by state agencies.
- iii. State should encourage factories to adopt ethical and legal recruitment practices through a social dialogue platform.

2. Social protection and social security measures

- i. Helpdesks and helpline numbers should be set up in every state for migrant workers, with information on all the relevant schemes and social security measures.
- ii. Social audits should be conducted by buyers on workplace security and access to benefits for health and employment-related schemes.

- iii. Industry associations members should establish and maintain national social protection platforms/floors comprising basic social security guarantees to ensure that all migrant workers avail those services and schemes.

3. Workplace conditions

- i. Grievance redressal systems should be strengthened by hiring social and gender inclusion experts.
- ii. Social audits should be conducted by third parties on safety and working conditions in the supply chain.

4. Safe migration and safe working environments for women

- i. Grievance helplines should be set up at the state level with women volunteers to support women employees.
- ii. Suppliers should strengthen ICs as per the PoSH Act for prevention, prohibition and redressal.
- iii. Conduct surveys/audits/ assessments by ICs on awareness of guidelines against sexual harassment at the workplace.
- iv. Industry associations need to get together and highlight areas where industry can work in close collaboration to ensure better conditions for workers, make it easier for factories to implement policies and work out joint collaborative arrangements for training and placement of workers, including providing them with decent and dignified living arrangements and access to minimum support facilities.

Conclusions

It has been 10 years since the OECD published its updated guidelines for multinational enterprises which has an entire section on human rights, 10 years since India followed up with its own National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business (NVG) around the same principles (four of its nine principles were about employees and community well-being). Although, a little overdue, OECD also came out with *OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector* in May 2017, which goes quite a distance in covering issues in the supply chain. In terms of real impact on human lives, it has been eight years since Rana Plaza building collapsed in Dhaka, Bangladesh, killing 1,132 people, only to see more incidents of a similar nature in the ensuing years. Unfortunately, neither guidelines nor past experience have made any impact on the ground.

Well-meaning international conventions such as the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights, as well as the ILO Core Labour Standards, freedom of association, the right to collective bargaining and the elimination of forced labour, abolition of child labour and of discrimination in employment and occupation have led to extensive studies, engagements with stakeholders, debates and progressive work. They have also led to the

creation of a number of legal and well-meaning institutional frameworks. However, these have not made a direct impact on the human rights practices in the business supply chains, and particularly so in the garment sector. Interestingly, the United Nations Commission on Human Rights (UNCHR) was established in 1946 (replaced by the United Nations Human Rights Council in 2006) and there was even a sub commission created in 1998 for transnational corporations with distinct guidelines that were supposed to guide their responses. Much like other such instruments, this seems to have been of limited, if at all any, impact on business practices and global supply chain.

And this is where the current baseline assessment's approach of reaching out to all the key stakeholders of garment sector assumes significance. It has identified a wide range of actual and potential adverse human rights impact across the spectrum of business processes of the garment industry which have worsened due to the impacts of the COVID-19 pandemic. It is worth noting that while adjudicating upon a challenge brought before the Supreme Court by two labour unions (against the Gujarat government's notifications rolling back the provisions of the Factories Act), Justice D.Y. Chandrachud², writing for the three-judge bench, noted that the provisions of the Factories Act could only be rolled back in cases of

²2020. https://main.sci.gov.in/supremecourt/2020/11439/11439_2020_34_1501_24245_Judgement_01-Oct-2020.pdf

a true 'public emergency', and that whilst the COVID-19 pandemic was definitely a public health crisis, it did not justify the removal of key provisions and protections of the Factories Act. Even more significantly, the Supreme Court securely placed labour laws within the ambit of the constitutionally guaranteed rights, including Article 21 (the right to life) and Article 23 (the right against forced labour), thereby elevating labour laws to the status of basic human rights. It is this type of progressive intervention by the highest court of justice in the country that should provide relief and hope in the ongoing endeavour of promoting human rights in workplaces.

National Action Plan on Business and Human Rights (NAP) has a critical role and when it gets finalised, it should be seen that it is not limited in its application and that the marginalised section of population working in factories – both formal and informal – get empowered through such an instrument of historical significance. The NAP holds a great promise for making up for the lack of a unifying theme for addressing business human rights. There is an apprehension that this might become an extension of corporate social responsibility (CSR), which at least in the Indian context has so far proved to be limited to

community development initiatives of varying scales and impacts. It is important that the NAP does not become an instrument to enlarge the scope of current CSR policies of companies in India. However, the plan will work best if the NAP stands as an instrument of significance on its own, and the State can generate actions amongst its nodal bodies to implement the plans as well as take actions against the erring parties. Enforcement of current laws and emphatic engagement with businesses on the NAP will be critical to the success of achieving its goals.

However, little will be achieved if we do not get all key stakeholders, and in particular the brands and factories, to agree on a zero-tolerance policy towards violations of human rights at workplaces. It is ironic that most of the advanced countries, where the brands are headquartered, have had a working NAPs in place for years, with little to show for them in terms of outcomes. If history is to go by, global corporations manage to avoid following through on all such conventions, which do not matter to them as a business case. It is important that the current project drives home the point that human rights, in itself, matters to their business and that they can directly adopt or facilitate actions to give a better life to millions of workers in their supply chains.



Awareness programme with women migrant workers

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