

# Working Paper – 1



Tata Institute of Social Sciences  
Patna Centre

## Male Out-migration and Women in Rural Bihar: A Socio-legal Study

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# Male Out-migration and Women in Rural Bihar: A Socio-legal Study

Miranda Das<sup>1</sup>

## Introduction

The gender dimension within the migration studies began to be explored since the 1970s<sup>2</sup>. But the focal points were about the women who migrated, reasons of their migration from the source location and their experiences of integration with the destination locations. The scope of the gender dimension started to broaden during the 1990s-2000s as the migration studies delved deeper and incorporated women who were not migrants themselves but were fundamentally affected due to migration of their male counterparts<sup>3</sup>. In fact, initial studies by Indian scholars about this dimension started appearing in the late 1980s<sup>4</sup>.

However, this exploration of the gender dimension within the migration studies regarding the non-migrant women was still inchoate and limited to socio-economic impact that had been left on these women due to their male counterparts' out-migration<sup>5</sup>. For instance, whether the remittances were instrumental in these women's development or dependence; and in what ways their male counterparts' out-migration impacted their mobility, autonomy, and decision-making in the household.

A closer examination of such exploration of the gender dimension yields observations and arguments that these women have been studied within the purview of the male migration. Moreover, what these studies have failed to explore are these women themselves. That is, these studies have not addressed the questions regarding the formation of these women's agency in the context of the complex process of migration. These studies rather exude a permanent contentment with the term left-behind women.

In this background, the present study problematizes the significance of this term. The first part will be descriptive of empirical evidences. In doing so, this study attempts to reveal who these women are, the commonality among them, their diverse means of subsistence, and the differences between them and those women whose male counterparts have not out-migrated. The second part will

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locate these women within the framework of rights, which helps study them in their individual capacity and examine if their basic rights are protected. Finally, the study will attempt a discussion, thereby producing conclusion.

## **Field Description**

The study was conducted in two villages, namely, Rampur Jalalpur and Chak Bahauddin of Dalsingsarai block under Samastipur district in Bihar. The choice for this district was based on the census report that it was a district with one of the highest out migrant's ratio. The reason behind choosing Dalsingsarai block was availability of a network of local help in the field. In accordance with my research objective, the local informant suggested me three or four villages. After the pilot study of these villages, the above-mentioned villages were finalized, because one of the objectives of this study was to look at the diverse means of subsistence of those women whose husbands had out-migrated.

Through the local informant, a meeting was fixed with an Accredited Social Health Activist (ASHA) who became the key informant in the study. She introduced me to several women. After interacting with them, sixteen women agreed to participate in the interviews. Therefore, a total number of sixteen in-depth interviews were conducted. Of these interviewees, six women worked as agricultural wage labourers, five women had home-based bidi rolling occupation, three women were engaged in fish retailing, and two tended the cattle of others. In addition to these interviews, informal conversation with four men, who had migrated to different parts of India, were also held.

## **Objectives of the Study**

The objective of this study is to examine the experiences and concerns of women whose husbands have out-migrated, while they remain in the source place. As noted earlier, these women are frequently referred to as left-behind women in migration literature. Therefore, the primary objective of this study is to examine if the term left-behind appropriately designates these women. In this endeavour, an attempt is made in this study to look at the social profile of such women and pull out commonality among them. Secondly, the study also investigates the occupational diversity among these women. Third, the study also examines the differences in the experiences and concerns of women who have migrant husbands and those women whose husbands have not out-migrated but stay with them. Fourth, the study also aims to locate these women within the framework of rights, in order to see if the laws conferring rights to them are adequately addressing their concerns.

## **Method and Limitations of the Study**

The research questions of the study were largely exploratory in character as it was not obvious in advance what exactly the eventual product or yield of answering them would be. Further, for answering such research questions, a qualitative research methodology was employed for this study.

Field work for this study was undertaken once in June 2016 and again from September 2016 to mid-November 2016. Observations and Semi-structured interviews were used as tools of data collection. Although a set of questions were prepared beforehand, but the intention was to make the interviews conversational. Therefore, the interviews ranged from an initial, broadly posed request for participants to describe their lives to specific follow-up questions or probes. Not all questions were designed beforehand. In fact, a number of questions were prepared during the course of fieldwork. Doing so was necessary in order to probe further or discuss specific issues in detail. Semi-structured interview was also useful because it allowed following relevant trajectories in the conversation that may stray from the set of questions to gather in-depth information. The semi-structured interview was preceded by observations to develop understanding of the field required for developing relevant and necessary questions.

Additionally, the study also relied on primary source materials like legal acts with secondary source materials like books, articles from academic journals and relevant website materials.

Finally, it is pertinent to note at this point that the scope of the present study is limited to women whose husbands have out-migrated and they stay back in origin community in the villages under study. The study, however, does not intend to either claim or aim to be generalisable to a larger context. Extrapolation to the larger migration experience is not the intention of this study.

## **Introducing the *Left-behind* Women**

Bihar is one of the most impoverished States of India. An estimated 40% of its population is believed to be living below the national poverty line<sup>6</sup>. People in the State usually find employment as agricultural labourers, although some among them might own tiny plots of agricultural land. A number of studies have suggested that people from the rural areas of the State migrate to rural or urban areas of better off states like Delhi, Punjab and Haryana. They find employment as labourers in construction or other infrastructure related sectors or in the millions of brick kilns that feed into those infrastructures, as street

vendors, rickshaw pullers, head-loaders, domestic help, manual scavengers and so on. Yet others make their way to hire out their labour to farmers in north-western India that is, the States of Punjab and Haryana, as agricultural labourers. They spend between four to five months in their destination locations, before returning to their villages where they spend between one to two months with their families. An overwhelming majority of them are men, whose wives and children stay back in the villages, attend to their homes or farms if they have any, go to school, and sometimes hire their labour out to local employers<sup>7</sup>. These wives of migrant men stay behind to independently tend the home, the children, and often the extended family that may include the husband's parents. These women and children are often referred to as the left-behind families of the migrants, and women particularly are termed as left-behind women<sup>8</sup>.

As mentioned above, several studies have attempted to assess the socio-economic impacts of male migration on those members of the family, especially women, who are left behind<sup>9</sup>. One of the objectives of this study is to figure out the social profile of the so-called left-behind women in these villages. The finding suggests that the women, particularly those in the villages under study, have certain common characteristics, apart from having an out-migrant male member in the family. The commonalities among these women are discussed below:

First, most of these women are de facto heads of their household. Defining 'head of the household' is difficult, particularly when it relates to a woman. Terms used in defining women heads of households may carry different meaning. Most popularly used are two, i.e. de jure and de facto women household heads. De jure household head is considered to be the permanent head of a particular household; de facto household head refers to that head of a household who is temporarily taking care of the household i.e. acting as a head in absence of the actual head of the household<sup>10</sup>. For the purpose of this study, any household in which the adult male is away for four months or more at a time, and a woman assumes the usual functions of the household head, is considered woman-headed household.

As noted earlier common pattern characterising migration of men in rural Bihar is that they leave their wives and children in the place of origin while they migrate in search of work. For instance, a 'well-documented strategy' for the households in rural Bihar is for the men to migrate in search of employment while their families remain at home. In the absence of male heads, households reconfigure themselves and women become de facto household heads and execute various responsibilities in their own capacity. Migration is an important fact of life in the villages under study, where a considerable



number of women aged 20-45 is married but their husbands are absent. The process by which these women become household heads is clear. Usually the man returns every few months, and major decisions such as marriage in the family, the use of property, sale and purchase of property, etc. are taken by him. But, the woman is likely to take household control on a daily basis as soon as the husband leaves. Apart from wealthier families, which are more likely to be joint families, the woman whose husband is a migrant labourer is automatically head of the household when her husband is away.

Second, majority of these women belong to the lower caste. Caste plays an important role as a factor of migration in these villages. The patterns of land ownership and the distribution of occupational and educational opportunities remain very closely aligned with the caste groupings. As a result, lower caste groups have very limited access to economic, social and cultural resources. Thus, the migration stream from the villages under study is dominated by lower castes, who were living at bare subsistence level and ready to respond to the fairly high wage gap between their source and destination places. Therefore, most of the women who remain in the origin place happen to belong to the lower caste. It is also to be noted that the propensity to migrate is also seen among upper caste residents of these villages, but they are less likely to circulate as labour migrants. This finding is also confirmed by the other studies<sup>11</sup>. They generally migrate with well paid jobs and hence often take their families along with them. Furthermore, family migration entails a cost. Being unable to meet the cost of migration, these villages are characterised by single male migration. While the males migrate, the women in the family choose to stay back.

Third, these women are from the landless households. The land holdings determine the socio-economic status of a household in these villages. The findings suggest that out-migration is highest among the landless households. In these villages, social caste and economic class inequalities co-exist. One can see that lower caste families are mostly landless. Most of them just have a small plot of land in which their houses are built. They hardly possess any agricultural or other land. The majority of people have their own houses but there is a shortage of housing and other basic facilities. Migration of these landless labourers is a part of the normal livelihood strategy and does not occur only during times of emergency. This finding is confirmed by other studies<sup>12</sup> too.

## **The Diverse Means of Subsistence of Women with Migrant Households**

The available literature asserts that these left-behind women have successfully managed their home, their children, and their extended families, which include the old and the sick<sup>13</sup>. A number of studies have also suggested that these women have been able to eke out a sustenance by hiring their labour out to local employers, or engaging in sporadic rural work opportunities<sup>14</sup>. This study finds that remittances from their migrant husbands are often intermittent and insufficient to make their needs meet. In such a situation, they are compelled to step out of the home and participate in the labour process. But their participation in the labour market is mostly confined to the lower end of the labour market as they are either illiterate or have very moderate level of literacy, that is, enough to write their names or count money.

Further, investigation into their occupational profile shows that these women are mainly involved in four to five kinds of work. A brief description about their occupational diversity is given below:

First, most of these women are agricultural wage labourer in others' field. As has been mentioned earlier, most of these women are from the landless households. They do not possess any land for agricultural activity. Therefore, they often work as daily wage labourer in someone else's agricultural field. In general, they are mainly involved in weeding and harvesting. They are also often employed for plucking of vegetables, for which they are paid in kinds and not in cash. For instance, for every twelve kilograms of vegetable they pluck, they are given one kilograms as wage.

Secondly, these women are also engaged in tending to others' cattle, which provides economic support to their families. Goat or sheep rearing is a common profession for women in these villages. Besides, their role of managing the cattle also includes feeding, breeding, milking, cleaning, care of new born calves and sick animals.

Third, women are also involved in fish retailing. It may be mentioned here that women have been an integral part of the fisheries in Bihar and have been active in processing, marketing and selling the catch<sup>15</sup>. Fishing is a traditional occupation for many in Bihar. Fishing is generally undertaken by men, whereas women take the charge of the catch and sell the fish either in the market or go door to door. Such women often work in very unhygienic conditions under the blazing sun and lashing rain. The women fish retailers

fail to earn a secure and viable livelihood even after a day long struggle. In fact, many a time, they face loss or earn nothing.

Fourth, home-based bidi rolling is the occupation of a vast majority of women in these villages. It is noteworthy that earlier there were several bidi factories in Dalsingsarai block of Samastipur district. However, after the state of Bihar was divided, most of the bidi factories have shifted to Jharkhand. There was one factory until 2007, which has now moved to Kolkata<sup>16</sup>. As a result, the bidi work started to move from the factory to the home. Most of the bidi rolling is done by women and helped by children, particularly daughters. Although the bidi factories have shifted to Jharkhand or Kolkata, they have retained their chain of contractors in these villages. Some of the contractors are former workers who have risen to become contractors and there are around 150-200 workers associated with one contractor. The women are paid on piece rate basis. They receive 100 rupees per 1000 bidis. According to them, they are only able to roll 500 bidis a day and hence, they earn 50 rupees per day.

There are other job opportunities coming up in these villages, such as Accredited Social Health Activists (ASHA) and Anganwadi workers, but these jobs require some level of education.

However, given the fact that these women are mostly uneducated or very moderately educated, they have fewer options of livelihood and they continue to bear their suffering in silence.

#### Comparisons between Women with Migrant Husbands and Women with Non-Migrant Husbands

In the attempt to understand the concerns of women who remain in the source communities, while their husbands or male counterparts out-migrate in search of livelihood or better opportunities, it is essential to examine if the concerns and experiences of these so-called left-behind women are different, in any way, from the concerns and experiences of women who stay with their husbands. The findings suggest that women with migrant husbands and women with non-migrant husbands have similar concerns with respect to their day-to-day lives. They have to face similar discrimination on account of their gender, their concerns regarding their family and children's wellbeing are also similar, and they abide by the same customs and so on and so forth. However, one can also find significant differences between the experiences of women with migrant husbands and those with non-migrant husbands.

Finding reveals that women whose husbands have not out-migrated mostly

belong to upper castes, whereas women with migrant husbands, by and large, belong to lower castes. As mentioned above, that tendency to migrate is found more among the lower caste people. The nature of migration from these villages is generally distress led<sup>17</sup>. As the lower caste people lack land holdings or any other productive assets to survive, they out-migrate in search of livelihood. Upper caste people are primarily the land holders in these villages. Therefore, the propensity to out-migrate is lowest among the upper castes. Hence, women whose husbands have not out-migrated mostly belong to the upper castes. Majority of left-behind women, on the other hand, belong to the lower castes. Thus, it can be argued that the so-called left-behind are a step down the ladder of hierarchy and thereby are additionally disadvantaged.

Apart from the caste profile, another way in which these women differ from one another is the use of the public space. The term public space is used in dual sense in this study. It implies the space of work as well as the space outside the home, such as streets, public buildings, parks, and so on that are open to the public and accessible for everyone in contrast to private space where access is restricted. As noted earlier, most of the women whose husbands migrate are found taking up some form of occupation. Since these women belong to the lower economic strata and often remittances sent by their husbands are not sufficient, they are compelled to earn for their families' sustenance. Women whose husbands stay with them, on the other hand, are primarily home makers. Their primary responsibility is to look after the family and home. It has frequently been observed in the literature as well that if women have a husband in the home, women's work is primarily in the home. Without husband, most women must work<sup>18</sup>.

Thus, the women with non-migrant husbands are fraught with burdensome responsibilities of being home caretakers. They are first and foremost wives and mothers. Women with migrant husbands, on the other hand, have to face internal and external struggles in reconciling their roles as mothers, wives and labour.

The women with migrant husbands also share a close relationship with the public space, which generally is dominated by men. For instance, these women have to go and stand in que to pay electricity bill, to take monthly ration from the ration shop, to they take their children to hospitals, in case of illness, go to bank to withdraw money and so on. These tasks are otherwise performed by males who do not out-migrate.

It is also observed that women with migrant husbands form and access their own networks, which is mostly women-based. These women-based networks provide assistance and guidance in times of crisis. However, women with non-

migrant husbands depend on their husbands' networks. This places them in a subordinate and submissive position.

### **Left-behind as used in literature**

One of the main objectives of this study is to investigate why these women who remain in the place of origin while their male counterparts out-migrate, called left-behind in the migration literature? Is it because of a lack of a better word? Or are these women termed left-behind as a logical consequence of male migration?

Irrespective of the reasons, the term left-behind as used in the literature evokes two meanings: first, these women have no role in their husbands' decision to out-migrate and eventually in their decision to stay back in the origin community<sup>19</sup>. It is as if the decision is taken solely by the husband or other male member in the family and they are simply made to give their consent. Reference may be made to Hondagneu-Sotelo's work where the author mentioned that:

“In all of the families in which men preceded their wives [to the United States], patriarchal forms of authority prevailed, so that migration decisions did not arise as part of a unified family or household strategy. Generally, husbands unilaterally decided to migrate with only token, superficial regard for their wives' concerns and opinions. Women were not active decision-making participants”<sup>20</sup>

It has also been argued that typically a husband will tell his wife that he is going and then he will be gone within a short time. Rarely does a clear plan develop from discussion between the wife and husband, but instead, the husband tends to justify his decision with generalised statements of family obligation and his responsibility for betterment of his family.<sup>21</sup> Another explanation is also offered by Hondagneu-Sotelo, who refers to the “Family stage migration” in the context of Mexico. It is a strategy where men go first with the potential that wives and children may follow at a later “stage”.<sup>22</sup> However, in many of the cases, there is no later “stage”.

The second sense is that the term left-behind indicates that these women have been abandoned by their husbands in the sense that these out-migrating men find and secure a new relationship in the destination place and leave these women and their relationship behind. It is, however, necessary to mention here that the issue of infidelity within the context of migration and abandonment of wives who stay behind is minimally addressed in the literature. A possible

reason for this, as has been argued, is that survey methods often fail to record such behaviour because questions are restricted to formal legal categories.<sup>23</sup>

## **Empirical understanding of the left-behind**

However, none of the above issues are true in the case of women in these villages under study. Migration, in these villages, is not a recent phenomenon. In fact, migration has become a fact of their lives. It has become a norm in these villages for the men to migrate and women to stay behind. The women who have been interviewed maintained that they will not wish to migrate, even if they are given a chance. There is, however, a history as to how this practice evolved into a norm. A number of literatures did attempt to investigate as to why women often stay behind, at least, initially as their spouses out-migrate. According to Samita Sen, the idea of a migrant, throughout history, has been imagined almost invariably as men, migrating alone or with other male kin from villages to industrial centres to earn maintenance wages, access wider networks of credit, and provide cash for rent and interest payments in the village. Periodically they returned from the city as a result of unemployment, sickness, fatigue, or the pull of social and emotional associations with the village home. The wives and children, by implication, were left behind in the village to eke out subsistence from rural resources, as remittances from the city were sparse and irregular. She goes on to argue that women historically were considered not only immobile but also invisible as a result of the cultural norm of *purdah*, migration was, therefore, out of question for them. Further, the city appeared to be the space for men, whereas the village with its idyllic character was the place for women.<sup>24</sup>

Notwithstanding the historical explanation, women from other parts of Bihar do out-migrate in the present time, but for the women of these villages not to migrate has developed into a choice. On being asked, it is maintained that it is neither the man nor the woman who makes the decision in this regard. It is the way it is. For instance, Geeta Devi of Chak Bahauddin village maintains that “How can we decide about migration? It is given that the man will migrate and woman will remain”. From this, one can argue that it is the patriarchal norms in these villages that decides who is to migrate and who is to stay back. Migration is seen to be a rite of passage, that is, a male member in the family will have to migrate in order to sustain his family, when he is transitioning to the adulthood. A boy child in these villages is conditioned in a way that he knows that at a certain age, he will have to out-migrate either with his father or on his own. In a similar vein, a girl child is conditioned to think that she will be married to someone who is either already a migrant or will out-migrate shortly.



Contrary to the notion that women have no role in men's decision to migrate, women in these villages want their men to out-migrate in order to earn a livelihood. They believe that when their husbands are at home, they waste their time in unsocial activities like gambling. So, it is better that they go out of the village and engage in income generating work. For instance, Kanchan of Chak Bahauddin village says, "There is no job opportunity in the village. So, when my husband is here, he wastes all his time in gambling with his idle friends. So, I will always want him to go to Haryana, where he is a sack carrier. At least he does something there that pays him at the end of the day".

From the above account, it can be argued that left-behind is not the appropriate term to define the women whose husbands out-migrate. It negates their agency. It also neglects the fact that many women choose to stay back in the origin community. Argument like gendered role alone does not explain their staying back as literature and Census data suggest that elsewhere women also migrate, even singly, in a large numbers. Their familiarity with their community and the life-style is cited by them as a reason for not migrating. Besides, their staying back is seen as cost-effective and they also manage to generate employment for themselves with the help of network of women that they have established over the years.

### **Impact of the Return of Migrant Husbands on the *Left-behind* Women's Lives**

A number of studies attempted to look at the changes that take place in the lives of women after their husbands out-migrate. However, findings from the fieldwork of this study indicate that changes actually take place when out-migrant husbands return.

It is noteworthy that there is a pattern as to when the men in these villages return. They generally return twice in a year, once during April and again during October-November. However, they may return at any other time as a result of unemployment, sickness, emergency in the family, emotional association with the village home and so on.<sup>25</sup> This period is also seen as season for marriages in Bihar. Any marriage in the family takes place only when the migrant husband returns. The period of October-November is also a festival season as people in Bihar celebrate Dussehra, Diwali and Chhath Puja.<sup>26</sup> So, the men generally work throughout the year and return during this period.

As mentioned earlier, these women are used to staying without their husbands. In fact, living without their husbands is a way of life for them. They enjoy the position of de facto household heads. So, when their husbands return

and attempt to reoccupy their position as heads of the family, these women find it difficult to negotiate with their power position. Literature suggest that migrant men wish to retain their status as heads of the family and their proprietary interests in the village, despite remaining absent for long periods of time.<sup>27</sup> It is noteworthy that the experience of all the women is not homogenous on this issue. Those women, who keep in touch with their husbands on a regular basis, even when their husbands are away, generally do not find it difficult to compromise their position in the family. On the other hand, those women who rarely communicate with their husbands over phone or by any other means, have a tough time negotiating with them. In fact, many of them believe that their husbands are like 'guests'. For instance, Ranju Devi of Rampur Jalalpur village says, "They are like guests. They have come and they will go. It is we who will have to manage the household and the family in their absence. So, why upset the arrangement?"

An attempt has also been made to incorporate the perspective of the men in this study. The finding reveals that the men, who are circular migrant to different parts of the country, are not comfortable with the fact that their wives are considered as household heads. They believe that they are the head of the family and the household irrespective of the fact that stay away. They further argue that they have migrated for the betterment of the family, to earn livelihood so that their family can survive. On being asked about their opinion regarding their wives' position in the home, they outright dismiss it, saying that they are the primary source of income earning for the family and their wives' earning only supplements their earning. They also maintained that if they choose not to migrate, the very survival of the family will be in danger. They also expressed that women might believe that their position in the family has elevated but they can never take the place of a head in the family. To quote, Birendra Das of Rampur Jalalpur village, who has migrated to Delhi to work as wage labourer, expressed his views on his wife being the head of the household. He sarcastically said, "I migrate, I earn and my wife is the head of the household? She might take non-significant decisions regarding day-to-day lives. But the final decision on serious and major issues will be mine. No matter if I am here at home or I am in Delhi or elsewhere." Another, Ram Ashish Das, of the same village, who has migrated to Bangalore to work in a Tile Factory said, "Our family is surviving because we have migrated for work and send remittances. If we don't go out of the village and earn, our family will starve to death". He further said, "What work my wife does? Her earning will not be able to sustain the family for even a month. Her earning only supplements to mine and therefore I am and will remain the head of the family."



From the above account, one can argue that the period when the migrant husbands return is a difficult one for some women. On the one side, these women are overwhelmed on the return of their husbands. Moreover, the period when their husbands return is generally festive season, so one is always happy to have the loved-ones around during celebrations. It provides them the opportunity to reformulate their relation with their spouse. But it is also the period of squabble between the husband and the wife. It demands adjustment on the part of two. In some cases, women happily adjust to their husbands' way. In many cases, however, it leads to remonstrance in the wives.

## **Women and the Framework of Rights**

Having discussed the women who remain in the origin community while their husbands out-migrate, an attempt is made in this section to place them within the framework of rights. As is evident from the above account, these women have unique experiences and their concerns are also unique. Although these women themselves do not migrate, yet migrations have a deep impact on the lives of these women. Nevertheless, laws on migration, both national and international, do not address the concerns of these women. It may be referred to as a situation of non liquet. A non liquet is a Latin word meaning "it is not clear" and refers to a state where there is no applicable law.

Rather than arguing for a law for these women, somehow the focus of literature in this area is the remittances that are used as parameters to gauge the dependency and development of these women. Do remittances suffice in evaluating these women? Are the rights also not required for the development of an individual? Why are the corresponding rights not discussed in the literature in this area, especially, when the focus of the literature is responsibilities by which these women are bound. Furthermore, existing literature also fail to make any reference to these women's rights, especially, regarding the property of which the prime example is the home. Therefore, the study argues that the framework of rights is important for the equality and empowerment of these women.

In the absence of any specific law that confers rights on to these women, an attempt will be made to examine their right to property, right to minimum wages and the right to equal pay for equal work. The justification of why these particular rights have been selected will be discussed below. It may be noted here that the concern is not so much with the framework of rights per se but the philosophy and assumptions underlying these rights and the mechanism by which they reinforce the subordination of these women.

## Right to Property

It is pertinent to note that every religious community in India continues to be governed by its respective personal laws in several matters – property rights are also one of them. In fact, even within the different religious groups, there are sub-groups and local customs and norms with their respective property rights. To complicate it further, under the Indian Constitution, both the central and the state governments are competent to enact laws on matters of succession and hence the states can, and some have, enacted their own variations of property laws within each personal law. There is, therefore, no single body of property rights of Indian women.

However, since the women under study belong, by and large, to the Hindu Religion, evaluation of Hindu Succession Act seems appropriate. Hindu women have enjoyed independent property rights since 1956, with the passage of the Hindu Succession Act, which confers upon Hindu women the right to claim a share to property through succession. The regime set up by this Act is located within the broad constitutional and legal framework existing in India today.

In the context of rural India, land was and continues to be the only viable resource to produce food and meet basic subsistence needs for a large part of the rural population. In response to this reality, statutory provisions have been introduced since independence to address various issues regarding equitable land ownership and distribution. Land, therefore, assumes a primary significance in any critical evaluation of law allegedly aimed at enabling Hindu women's right to property ownership.<sup>28</sup> Since the women under study are landless labourers, ownership of the house in which they dwell is a major issue for them. In the literature in this area, taking care and the management of the household have been mentioned as the primary responsibilities of these women. However, the fieldwork observation emphasizes that the home holds a more significant place in their lives than what it does in the case of their out-migrated male counterparts. This is because it is also the place of work for many who are home-based workers. Because the home has dual function or significance in their lives, therefore, their rights over the home become important for this study.

In this context, reference may be made to the provision relating to the right of inheritance to a dwelling house. It provides that where a Hindu man dies intestate, that is, without having made a will, and his property includes a dwelling house wholly occupied by the members of the family, then the women heirs are not entitled to claim partition of it unless the male members choose to divide their share in the dwelling house. These women are only entitled to

merely the right of residence. This provision renders these women as nothing more than caretakers of property owned by others.

There is, however, an amendment to the Hindu Succession Act and known as Hindu Succession (Amendment) Act, 2005. The amended act also fails to alter the wife's position as legal heir to her husband's property. It has only resulted in the husband's share being reduced because of the rights of the daughters equal to that of the sons. Prior to this amendment, the wife and daughter only had a share in their father's share on estimated partition between the dead father and his son. However, after the 2005 amendment, where the wife has daughters then her husband's share would shrink to the extent that her daughter is now given an equal share of the undivided family.

To illustrate, if the dead Hindu man leaves a wife, a son and a daughter, then the share of the wife and daughter prior to amendment in 2005 would have been one-third of half of the share of the deceased, with son getting other half share on deemed partition in the first round. The son would also get one-third of half of the share of the deceased along with mother and sister in the second round. However, after the amendment in 2005, the husband's share will get reduced to one-third because of the right of the daughter. Therefore, the wife will get only one-third of such one-third share with son and daughter getting one-third share in the first round besides one-third of remaining one-third along with mother.<sup>29</sup>

Thus, it can be argued that Hindu wife is not recognised on par with son and daughter, and therefore, do not have the same share as son and daughter. The amendment of 2005 have only resulted in Hindu women's right to property being shrunk in size.

Therefore, one can argue that role of law as a guarantor and generator of rights is important. However, if the aim is the achievement of justice for women, the substance of Hindu Succession law in the case of guaranteeing these women the right to property falls substantially short of the aim. The most important problem lies in the framework of this Act, which aims to confer the right to property upon Hindu women, is predicated upon religion based ideology. Further, it structures women's claim to property as located within the family. For instance, with respect to women's right to her husband's property, a Hindu woman is believed to identify her interest with that of her husband's family. Woman's interest is conceived as legitimate only in terms of the community of the marital family. This community of interest often precludes a legitimate interest for individual person.

It is also to be noted that the issues regarding these women may be distinguished from the right of Hindu peasant women in small and marginal farming households. While the former work on others' land for remuneration, the latter work on the land owned by the family. As such, the key issue for the women under study is the right to ownership of the house, which is built on a tiny tract of land. Additionally, another major issue for these women landless labourers in the context of ownership is the right to benefit equally from any land redistribution programmes to bestow the landless.<sup>30</sup> Since, there is the absence of effective land redistribution programmes in the villages under study, the foremost issues for these women are the right to minimum wages from the employer and equal remuneration for equal work. An attempt to examine each of these rights is made in subsequent part of the paper.

### **Right to Minimum Wages**

As mentioned earlier, right to minimum wages is one of the foremost issues for these women, therefore Minimum Wage Act<sup>31</sup> is one law that these women can look up to in case of discrimination in terms of wages.

The initiative for determination of minimum wages was started as early as 1920 when a proposal for setting up Boards for determination of minimum wages in various industries was suggested. In 1926, the International Labour Organisation (ILO) adopted the Convention No. 26 and Recommendation No. 30 relating to wage fixing machinery in trades or parts of trades. Subsequently in 1943, on the recommendation of the Standing Labour Committee and the Indian Labour Conference, a Labour Investigation Committee was appointed to investigate into the question of wages and other matters like housing, social conditions and employment. Later the Indian Labour Conference considered a draft bill in this regard in 1945. A year later the Standing Labour Committee recommended a separate legislation for the unorganised sector to regulate the working hours, minimum wages and paid holidays. Accordingly, a Minimum Wages Bill to provide for fixation of minimum wages in certain employments was passed in 1946 and came into force in 1948.<sup>32</sup> In the meanwhile, industrial relations started deteriorating which compelled the Government to appoint a Central Advisory Council to advise on issues relating to payment of fair wages to labours. The Central Advisory Council further appointed a tripartite committee in 1948 called the 'Fair Wages Committee' to set the principles on which fair wages should be based and to suggest the criteria on which these principles should be applied. The report of this Committee was supposedly a landmark report in the history of formulation of wage policy in India as it gave the definition for three levels of wages namely; a minimum wage, a fair wage and a living wage.<sup>33</sup> According to the recommendation of the Committee, "The

minimum wage must provide, not merely for the bare sustenance of life, but also for the preservation of the efficiency of the worker by providing for some measure of education, medical requirements and amenities".<sup>34</sup>

The definition of minimum wages got further refined by the 15th Indian Labour Conference which laid down the norms for fixing need based minimum wages to include a standard working class family to comprise of three consumption units, that is, a wife and two children apart from the earning worker.<sup>35</sup>

On the face of it, one does not find this recommendation unfair. But careful understanding reveals that the Committee clearly speaks about the needs of a male worker and his family. The explicit reference to male worker itself is problematic. The lawmakers seem totally oblivious of the existence of female worker, and therefore, were not bothered to incorporate their concerns. In a country like India, laws are often blatantly violated despite having stringent provisions. Therefore, one can imagine the situation in case of not having any provision. Women's right to minimum wages are violated on a regular basis across the country.

It may, therefore, be argued that the lawmakers incorporated and legitimised what the law is in society. When envisaging the family as consisting of a man, a woman and their children, the lawmakers believed it as a norm. However, there are contending claims that question such a notion of family. There may be people who want an alternative to this norm but their experience is excluded from what this law recognises and protects. In the case of these women, living without their husbands is a norm. Therefore, one can argue that they are clearly outside the scope of this recommendation and thereby the Act.

Another problematic aspect of this Act is that the unorganised workers are outside its purview. In order to have minimum wage fixed, the employment or industrial activity has to be included in the schedule of Employments. Currently the number of scheduled employments in the Central government is 45 whereas in the state sphere it is 1232. The criterion for inclusion in the list of scheduled employment is that there should be at least 1000 workers engaged in that activity.

Thus, a large number of activities are excluded from the list of schedule employments. This criterion for inclusion has left a very large number of workers in the unorganised sector outside the purview of the Minimum Wage Act.<sup>36</sup>

Since most of the women under study are concentrated in the unorganised

sector, this Act does not include them. For instance, as noted earlier a vast majority of women in these villages are home based bidi workers, who are paid at piece rate. As these women are outside the purview of this Act, even after working for days, these women fail to get what a time-rated worker gets after eight hours of work. Presently, these women are paid Rs. 100 for 1000 bidis and this wage have been in force for the last five to six years. However, according to the revised rates, a factory bidi worker should be paid Rs. 134 for 1000 bidis.

## **Right to Equal Pay for Equal Work**

Although India ratified the ILO Equal Remuneration Convention No. 100 of 1951, which requires ratifying states to promote the application of the principle of equal remuneration for work of equal worth regardless of sex, as early as September 1958, the Government of India promulgated the Equal Remuneration Bill only on September 26, 1975, which subsequently became an Act of Parliament on February 11, 1976.

The need for Equal Remuneration Act was justified on the ground that the Minimum Wages Act, 1948 failed to specifically provide for equality of wages to be paid to men and women. Moreover, there was also no restriction on the fixation of different rates of wages for similar occupations covered by the Act.<sup>37</sup>

According to the Equal Remuneration Act, 1976, it is the "duty of the employer to pay equal remuneration to men and women workers for same work or work of a similar nature." "Same work or work of a similar nature" means work in respect of which the skill, effort and responsibility required are the same when performed under similar working conditions by a man or woman and the difference, if any, between the skill, effort and responsibility required of a man and those of a woman are not of practical importance in relation to the terms and conditions of employment.<sup>38</sup>

From the above, it appears that the Equal Remuneration Act was never meant to give equality to the women workers, like those under study. It is because in the cases of these women who are concentrated in a small range of jobs at the lower end of the job market, there are no male counterparts with whom they can claim equality of work. Technically, thus, these women do not do similar work with men and this anomaly is not challenged by the Equal Remuneration Act.

Thus, it may be argued that while the terms 'minimum wages' and 'equal remuneration' connote a floor level for wages irrespective of sex, the formulation



and enactment of these Acts had premised itself on the assumed differential responsibility and therefore lesser needs of such women.

From the androcentric nature of the above-mentioned Acts it appears that the lawmakers assumed that all married women would be dependent on their husbands and that the husbands would fulfil their legal obligation to maintain their wives. They envisaged the existence of a family wage ignoring the reality that a considerable proportion of the population of women could not rely on a man's wage. They also appear to assume that all women who work are only supplementing the family income to ensure a higher standard of living.<sup>39</sup>

## **Conclusion**

An attempt will be made in this section to put the issue under study into a theoretical perspective. The term left-behind has been used in literature for the women under discussion. After analyzing the appropriateness of this term, it might be suggested that the term is inadequate in describing the experiences of these women. The term may have been used in a literal sense, that is, to mean that someone has moved ahead and the other has been left behind. There is also a possibility that this term may also have been used by scholars for lack of a better word. If one believes that these women are the authority on what has happened in their lives, how they experienced them, and what they want, then they are clearly not left-behind but are the ones who choose to stay back.

It might be argued that this term evokes pity for these women. Yet the vulnerability caused by the fact of migration has not been adequately addressed in the literature. These are lower caste, uneducated, poor women who often participate in the labour process to manage the household singly as their husbands have out-migrated. Thus, they are different from the women whose husbands live with them.

It may further be argued that by designating these women as left-behind women in the migration literature, their issues and concerns have been actually left behind in the migration discourse and scholarship. While new researches are being undertaken on migrants and issues that concern them, the concerns of these women are simply left behind. The available literature on migration, or even gender and migration, have failed to sufficiently explore the relation between migration and vulnerability of the ones who do not themselves migrate but are a part of the migration process. Similar is the case with laws and policies that also leave the concerns of these women behind unaddressed. Because of the unique position of these women, general laws and even more specific migration laws, have failed to accommodate the concerns of these women.

After examining the laws that confer rights on people, one gets to know that laws are essentially androcentric. The above-mentioned Acts are a testament to overlooking the interests of women in general and these women particularly. When these women are considered a component of the migration process and located in the context of legal rights, then one can see a new contour to the classic public/private dichotomy that feminists have long been challenging. Before discussing the new contour of this public/private dichotomy, it is essential to mention that feminist scholars in disciplines ranging from sociology to law challenge the gendered division of the public and the private space. Scholars like Carole Pateman, for instance asserts that the dichotomy between the private and the public is fundamental to almost two centuries of feminist writing and political struggle, and it is ultimately, what the feminist movement is all about.<sup>40</sup> A clear articulation of this critique can be found in second-wave feminists' claim that "the personal is political".<sup>41</sup>

The modern political thought, from its inception, has been founded on a division between public and private spheres. The public sphere, which is the sphere of politics, law, and sphere of work is reserved for the males, and the private sphere, which is non-political, sphere of home, where law cannot interfere is reserved for the females. The feminist analyses and critique of the gendered nature of the public/private divide is ground-breaking.<sup>42</sup>

Historically, women's rights were curtailed based on the public/private dichotomy, in which it has been argued that law cannot interfere in the private space that a woman occupies. However, in the case of these women, the private space is not just the space of home and family but also the origin location, that is, the location from where their husbands out-migrate, and the destination location represents the public space. It is precisely for this reason that even when these women transcend the boundaries of home and participate in the public space of work, their rights are not fully protected. This is also evident from the fact that today we talk about portability of rights for migrants, that is, rights that a migrant will carry to the destination location, which is believed to be the place of work. Whereas, for these women, the area of the private space is widened as the origin location subsumes the public space in which these women participate for survival.

To conclude, it may be noted that to understand migration at anything more than a superficial level, all participants in the migration process, that is, those who migrate, those who stay back, and those who are peripherally affected must be considered and incorporated.



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