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# COMPARATIVE AND CRITICAL ANALYSIS OF PROVISIONS ON INTERSTATE MIGRANT WORKERS IN NEW LABOUR CODES

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## ABSTRACT

The Economic Survey of India 2017 statistics reveal that interstate migration in India between 2011 and 2016 averaged close to 9 million per year. The plight of these interstate migrant workers was brought to light during the nation's first lockdown. The event also brought to light the flaws and shortcomings in the law governing inter-state migrant workers, The Inter-state Workmen's (Regulation of Employment and Conditions of Service) Act, 1979. The laws governing Inter-state migrant workers have undergone major revisions because of the introduction of new labor codes. The Occupational Safety, Health, and Working Conditions Code, 2019 currently incorporates the provisions of the Inter-State Migrant Workmen(Regulation of Employment and Conditions of Service) Act, 1979.

This article's main objective is to assess the inadequacies of the previous legislation i.e., the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act. Compare the provisions in the new code with those in the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act to see the most significant changes that have been made to the code regarding inter-state migrant workers. This article focuses particularly on the important issues that should have been covered by the new labor laws as well as the highlights and drawbacks of its Inter-State migrant worker provisions.

**Keywords:** Inter-State migrant workers, Labour Codes, Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, The Occupational Safety, Health, and Working Conditions Code, 2019.

## **1. INTRODUCTION:**

According to estimates from the 2011 Census, there are nearly 20 million Inter-state migrant workers in India. These workers are mostly in the unorganized sector working under contractors. The horrifying scenes of hundreds of workers walking miles, in the sweltering heat to reach their hometowns, during the first lockdown in India brought to light the predicament of these migrant workers. The governments lacked information and data on these inter-state migrant workers that would have allowed them to assist and support the employees. This instance demonstrated how inadequately supportive the current legal framework for interstate migrant workers is. The Inter-State Migrant Workers (Regulation of Employment and Conditions of Service) Act, 1979 which governs interstate migrant workers, has fallen short of its aim of providing migrant workers statutory protection. The predicament of interstate migrant workers brought to light the necessity for significant reforms to be made to the current laws.

The laws that govern interstate migrant workers have undergone some substantial modifications because of the implementation of new labor codes. The Occupational Safety, Health, and Working Conditions Code, 2019, currently encompasses the provisions of The Inter-State Migrant Workers (Regulation of Employment and Conditions of Service) Act, 1979. The concept of interstate migrant labor has been widened under this new legislation, making it possible for these workers to register via an internet portal.

While the new labor rules address certain significant concerns about the protection of interstate migrant workers, they have in other ways also fallen short in addressing the gaps left by the earlier legislation. Interstate migrant workers are a marginalized and vulnerable group with minimal protection, therefore the addition of new provisions to the labor codes addressing the issues that they face gives them some respite.

## **2. The Inter-State Migrant Workers (Regulation of Employment and Conditions of Service) Act,1979**

To control the hiring of interstate migrant workers, the compact committee, established in February 1977, recommended that separate, central laws are passed. Then the Indian Parliament passed the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act in 1979 to control the employment and service conditions for

migrant workers from other states under Indian labor law. The Act's goal is to safeguard Indian employees whose services are required outside of their home states. The statute makes provisions to hire more talented individuals who are accessible outside the state if a company has a skills gap among the locally available workers.

Interstate migrant laborers must only be hired through contractors, according to the Act. While the host states would use contractors, the home states would use recruiting agents. They both need state permission in their respective jurisdictions. Both states have a complex framework in place for this sort of paperwork.

When employing migrant labor, the establishment must be registered with the local government. This implies that if an enterprise does not have a certificate from the relevant government, it is barred from hiring migrant labor from other states. The same regulation is in effect for contractors that hire employees from one state and send them to work in another state. In this way, the Act tries to regularize the process for employing inter-state workers by placing various procedural compliances.

## **2.1 Shortcomings of The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979**

The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, discusses several provisions for providing legal assistance for interstate migrant workers, including registration, contractor licensing, etc. The legislation though is deficient in certain areas, such as the fact that it does not include the employees in an unorganized sector, which employs more than half of all inter-state migrant workers.

### **2.1.1 Restrictive scope:**

According to the Act, this act applies to every establishment which employs five or more interstate migrant workmen on any day of the preceding twelve months even if they are appointed in addition to the local workers. The definition of inter-state workmen according to the act also considers only those workers who are employed by the contractors as inter-state workers. This automatically leaves those workers not employed through contractors out of the scope of the Act. In the case of *Salal Hydro Project v/s State of Jammu and Kashmir*<sup>1</sup>, the Court has observed that every worker whether employed through the contractor or not requires

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<sup>1</sup> Salal Hydro Project v/s State of Jammu and Kashmir, 1984 AIR 177, 1983 SCR (2) 473

protection under the act.

### **2.1.2 Lack of data:**

Since the economic liberalization in 1991, the quantity of inter-state migrants has changed significantly. According to a survey, nearly 20 million workers migrated to other states seeking a livelihood in 1991, while this number jumped to 40 million in 2001. The increase in the number of migrant workers in such a significant proportion led to a lack of data with the governments. Even though the Act mandates the contractor to furnish all the information about the migrant workers, the implementation of the law has not been effective. Also, a lot of workers are employed by contractors are employed as local workers to avoid procedural compliances. Further, the workers move continuously, so it is difficult to collect proper data on such workers. Lack of data essentially means that the governments cannot provide the basic facilities to the workers, and neither are they protected by the Act as the Act mandates the registration of the workers.

### **2.1.3 Lack of implementation**

Even though the Act mentions several safeguards for inter-state migrant workers, the implementation has not been effective. For example, section 12<sup>2</sup> of the Act mandates the contractor to furnish the information of the migrant workers who are being employed by him. However, contractors to avoid procedural compliances employ the inter-state workers as local contract workers, thereby not furnishing any information on the workers. In this way, even though duties are cast upon the contractors, and principal employers to provide data and give social security to the workers, they simply do not comply with those rules. The penalty for non-compliance is also not sufficient to force the contractors or principal employers to comply with the provisions.

### **2.1.4 Lack of provisions for women inter-state migrant workers:**

Many women workers also migrate from one state to another in search of a livelihood. However, the act does not give any special social security benefits or mention anything about

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<sup>2</sup> Section 12 -Duties of contractors.—(1) It shall be the duty of every contractor— (a) to furnish such particulars and in such form as may be prescribed, to the specified authority in the State from which an inter-State migrant workman is recruited and in the State in which such workman is employed, within fifteen days from the date of recruitment, or, as the case may be, the date of employment, and where any change occurs in any of the particulars so furnished, such change shall be notified to the specified authorities of both the States;

the women inter-state migrant workers. This exclusion of women from the security of the act further narrows down the scope of the act. Neither the act nor the governments provide any protection or benefits to the women inter-state migrant workers.

These are some of the shortcomings and lacunae in The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979. While some of these shortcomings have been addressed in the new labor codes, other' problems of inter-state migrant workers are yet to see the light of the day.

### **3. The Labour Codes**

Four labor codes were adopted by the Indian parliament in the 2019 and 2020 sessions. The Codes were introduced based on the recommendations of the National Commission on Labour. These four codes will consolidate 44 existing labor laws. They are The Industrial Relations Code 2020, The Code on Social Security 2020, The Occupational Safety, Health, and Working Conditions Code, 2020, and The Code on Wages 2019. The Codes consolidated the provisions of labor acts into a systematic classification. The provisions mentioned in The Interstate State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 are subsumed into The Occupational Safety, Health, and Working Conditions Code, 2020(hereinunder mentioned as "OSHW code") and some provisions into The Social Security Code, 2020.

#### **3.1 Salient features of provisions related to inter-state migrant workers in The Occupational Safety, Health, and Working Conditions Code, 2020**

Chapter XI, Part II of the OSHW code specifically deals with the provisions relating to inter-state migrant workers. Most of the provisions of The Interstate State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 are subsumed into the OSHW code.

##### **3.1.2. Applicability of the Code**

The Code explicitly mentions that it applies to all the establishments in which ten or more inter-state migrant workers are employed or were employed on any day of the preceding twelve months. While the act specified that the threshold for the application of the Act was five or more inter-state migrant workers, this code increased the threshold to ten or more inter-state

migrant workers.

### **3.1.3 Duty of the contractor**

The act says that the contractor must ensure proper suitable conditions for the worker and the safety of the workers during the period of employment. It also mandates that the contractor must extend all the facilities and provide medical check-up facilities to the workers.

### **3.1.4 Registration of Inter-state migrant workers**

The code explicitly mentions that the state and central governments must register inter-state migrant workers. The Code also provides that the workers if not registered by the states, can also register themselves with Aadhar and telephonic verification. This is a major shift from the provisions mentioned in the Act which put the onus on the contractors, government, and intermediaries to furnish all the information regarding the workers and register of inter-state migrant workers. However, the code now also allows the workers to get themselves registered.

### **3.1.5 Portability of Public Distribution System (PDS)**

The code makes a mandatory obligation on the governments to provide a choice to the migrant workers to either receive the ration in their origin state or destination state. This provision allows for the inter-portability of the rations for the inter-state migrant workers. This provision was completely missing in the Inter-state workmen (Regulation of Employment and Conditions of Service) Act, 1979 which in turn led to the mass exodus of inter-state migrant workers as the ration was available to them only in their origin state and not in the destination state where the workers were employed.

The new code on occupational safety, health, and working conditions did address some of the loopholes in the previous legislation on inter-state migrant workers like the registration of workers, portable Public Distribution System (PDS), etc.

## **4. Shortcomings of The Occupational Safety, Health, and Working Conditions Code**

While the Occupational Safety, Health, and Working Conditions Code does make some improvements over the previous interstate migrant labor legislation and introduces some new ideas, such as the portable public distribution system, it falls short in some areas in terms of addressing issues that interstate migrant workers face.

## **4.1 Restrictive application**

The OSHW code says the code applies to any establishments that have ten or more inter-state migrant workers. The threshold in c was five workers. This is now increased to ten in the OSHW code. The Sixth Economic Census<sup>3</sup> for the year 2013 – 2014 suggests that 70% of establishments in India employ less than 6 workers. This excludes all those establishments which have less than 10 inter-state migrant workers from the ambit of the code.

## **4.2 Restrictive scope**

### **4.2.1 Inter-state migrant workers in the unorganized sector**

The major problem with The Inter-State Migrant Workers (Regulation of Employment and Conditions of Service) Act,1979 was that the Act did not cover those inter-state migrant workers who were employed in the unorganized sector. This code also only applies to those workers who are employed in the organized sector. According to data from the 2011 census, collected from the National Sample Survey Office (NSSO) mentions that there are over 65 million inter-state migrants, one-third of whom depend on daily wages or are employed in the unorganized sector. These 65 million inter-state migrants are excluded from the protection of the code.

### **4.2.2 Intra-state migrant workers**

While a lot has been said about inter-state migrant workers, the code leaves intra-state migrant workers out of the scope. As per the latest available census data, in 2011, over 85 percent of migrant workers were intra-state migrant workers. All these 268 million workers are left outside the ambit of the code without any statutory protection being offered to them. The exclusion of intra-state migrant workers further restricts the scope of the code.

## **4.3 Presumption of accessibility for registration by the workers**

One of the major reasons for the migrant crisis during the first lockdown was that the governments had no data on the sheer number of inter-state migrant workers. Even though The Inter-State Migrant Workers (Regulation of Employment and Conditions of Service) Act,1979 mandated contractors to furnish the data on inter-state migrant workers, its implementation was

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<sup>3</sup> Ministry of Statistics and Programme Implementation, Sixth economic census(2013-2014), retrieved from <https://mospi.gov.in/web/mospi/6th-economic-census>

abysmal. The code tried to address this issue by allowing the workers to register themselves other than mandating state, central governments, and contractors to register workers and furnish the information. However, this provision presumes that all the inter-state migrant workers have Aadhar cards and have accessibility to smartphones for telephonic verification. This depends upon the government's efforts for providing Aadhar cards to all workers and enabling them to have access to smartphones.

#### **4.4 Provision of the portable public distribution system (PDS) subject to a minimum threshold.**

The code provides that inter-state migrant workers can have an option for taking the ration either in their original state or in their destination state. While this provision is much needed one, the applicability of this provision is also subject to the minimum threshold limit mentioned in the code. In other words, only those workers who are employed in establishments with 10 or more inter-state migrant workers can avail of this facility of portable Public Distribution System(PDS). This categorically excludes those workers who are employed in establishments that have less than ten inter-state migrant workers. Such categorization excludes the workers from getting benefits from the provisions of the code.

While these shortcomings do cause hurdles in providing benefits to inter-state migrant workers with the help of this code, the benefits provided outweigh the shortcomings. The shortcomings can also be addressed in the future by making amendments to the code for achieving its objective of providing benefits and protection to inter-state migrant workers.

### **5. Provisions for inter-state migrant workers in the Social Security Code, 2020**

The Social Security Code,2020 provides all those provisions that deal with providing social security to the laborers like providing health insurance to the workers, etc. Under the code, the term "employee" also includes inter-state migrant workers. Hence, certain social security is provided for inter-state migrant workers as well.

The definition of "inter-state migrant workers" as defined in the Code has been expanded to include individuals who relocate from one State for employment in an establishment in a destination State and may subsequently change their establishment within the destination State by an agreement or other employment arrangement.



Such workers must earn a minimum of INR 18,000 per month to be considered interstate migrant workers. Interstate migrant workers would also be considered "employees" under the Code and be entitled to certain benefits as such because they are included in the definition of "contract labor" as well. These are the benefits given to inter-state migrant workers under the Social Security Code, 2020.

## **CONCLUSION**

Interstate migrant workers are one of the marginalized communities in the country that lack basic facilities and livelihood. The migrant crisis during the first covid lockdown highlighted the plight of these workers and emphasized the need to reform the existing legislations that regulate the inter-state migrant workers. The Inter-State Migrant Workers (Regulation of Employment and Conditions of Service) Act, 1979, which governed and regulated the inter-state migrant workers provided various safeguards and benefits for the inter-state migrant workers, its poor implementation stopped it from achieving its primary objective of providing statutory safeguard to the inter-state migrant workers.

With new labor laws being introduced in the country, a much-needed opportunity to reform the existing provisions regulating inter-state migrant workers was present. The Occupational Safety, health and working conditions code subsumed the provisions of The Inter-State Migrant Workers (Regulation of Employment and Conditions of Service) Act, 1979. While some loopholes in The Inter-State Migrant Workers (Regulation of Employment and Conditions of Service) Act, 1979 were addressed in the OSHW code like increasing the threshold of applicability to an establishment with ten or more inter-state migrant workers, introducing a portable public distribution system(PDS), etc, it also fell short in some aspects like not including the intrastate migrant workers or those employed in the unorganized sector, placing threshold limit on the portable public distribution system, etc. While the provisions related to inter-state migrant workers in the code did bring some much-needed reforms in the inter-state migrant workers legislation, proper implementation of the code alone can fulfill its aim of proving statutory benefits and safeguards to the inter-state migrant workers.

## References

### Statutes

- The Inter-State Migrant Workers (Regulation of Employment and Conditions of Service) Act, 1979
- The Occupational Safety, Health and Working conditions Code,2020
- Social Security Code, 2020

### Websites

- [www.labour.gov.in](http://www.labour.gov.in)
- [www.manupatra.in](http://www.manupatra.in)
- [www.mospi.com](http://www.mospi.com)

### Case laws

- Salal Hydro Project v/s State of Jammu and Kashmir