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## LAWS RELATING TO PROTECTION OF MIGRANT WORKERS WITH REFERENCE TO ILO

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Ritika Bahri, Law College Dehradun

Dr. Khaleeq Ahmad, Law College Dehradun

### ABSTRACT

Migration is a major trend in the world due to the existence of economic differences, globalization, labour and political instability.<sup>1</sup> The migrant workers are also playing a significant role in the economic development of the host and home countries, but they continue to be the victims of exploitation, discrimination, unsafe working environment, and lack of fundamental rights. The role of the International Labour Organization (ILO) conventions and standards is instrumental in ensuring the protection of the rights and dignity of migrant workers via the international legal frameworks that support equality, social security, decent work and non-discrimination<sup>2</sup>. As both a source and destination country of migrant labour, India has put in place numerous constitutional and statutory protections, though, implementation issues still pose a challenge to successful protection. The COVID-19 pandemic also revealed the precarious lives of migrant workers and particularly in the informal sector. The paper critically analyses the legal safeguards that can be availed to the migrant workers and specifically to the ILO conventions, international human rights standards, and Indian labour laws. It examines how the constitutional guarantees, labour welfare laws, judicial interventions, and reforms in policies contribute to labour justice. The paper also points out the gaps in implementation, and provides recommendations on how legal and institutional frameworks can be tightened to provide social and economic security to migrant workers.

**Keywords:** Migrant Workers, International Labour Organization, Labour Rights, Human Rights, Labour Laws, Social Security, Decent Work, Constitutional Protection, Migration, Employment Justice.

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<sup>1</sup> International Organization for Migration, World Migration Report (2022).

<sup>2</sup> Jean-Michel Servais, International Labour Law (Kluwer Law International 2017).

## **Introduction**

One of the characteristics of globalization and economic growth has become migration of labour. Millions of labourers either cross the national borders or even national territories in search of jobs, improved living standards and economic security. Migrant workers are an essential part of the national economies, especially in such spheres as construction, manufacturing, agriculture, domestic work, transportation, and services. Although many migrant workers are greatly contributing to the growth of the economy, they are often faced with exploitation, inadequate working conditions, wage disparities, human trafficking, forced labour, and deprivation of social security benefits. Such weaknesses require an extensive law on its protection.

International labour standards have been developed by the International Labour Organization (ILO) which was founded in 1919 and which has been instrumental in setting international labour standards that protect the workers including the migrant labourers. The most important international documents that protect the rights of migrant workers are the Migration for Employment Convention, 1949 (No. 97), and Migrant Workers Convention, 1975 (No. 143).<sup>3</sup> Such conventions include the equality of treatment, protection against the abusive recruitment practices, decent working conditions, and social security. Moreover, the acknowledgment of the dignity of migrant workers and the rights established in the Universal Declaration of Human Rights and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families only enhance the honor and rights of migrant workers.

Migrant workers constitute a large portion of the labour force particularly in the informal sector in India. Articles 14, 19, 21, 23 and 24 in the Constitution provide equality, freedom of movement, right of life, and safeguard against exploitation.<sup>4</sup> There are a number of legislations like the Inter-State Migrant Workmen Act, 1979, Code on Social Security, 2020, Occupational Safety, Health and Working Conditions Code, 2020, and Minimum Wages Act which aimed to regulate and protect migrant labour. Nevertheless, absence of implementation, effective enforcement systems, illiteracy, poverty and social security deprivation keep migrant workers at the mercy of extreme suffering.

The paper is a critical analysis of the laws on the protection of migrant workers as per the ILO

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<sup>3</sup> International Labour Organization, Migration for Employment Convention (1949).

<sup>4</sup> Constitution of India, 1950.

laws and the legal mechanisms in India. It also looks at the issues that migrant labourers are facing and what reforms are needed so that labour rights and social justice can be effectively realised.

### **Migrant workers are defined by their concept and nature.**

Migrant workers refer to people who move to other regions, states and countries in search of jobs. Migration can either be temporary, seasonal, permanent, internal or international based on economic, social and political factors. Globalization, industrialization, unemployment, poverty and economic imbalances have augmented labour migration at a rapid rate. The migrant workers tend to work in labour intensive industries that need low or semi-skilled labour.

According to the International Labour Organization, migrant workers refer to individuals who move out of their home countries to another country with the intention of getting to be employed in other ways than personally. Internal migration is a significant labour movement in India where labourers leave economically disadvantaged states like Bihar, Uttar Pradesh, Jharkhand and Odisha to work in the industrialized states. These workers are usually employed at construction sites, factories, brick kilns, mines, agriculture and in the domestic services.

The migrant workers are exposed to many vulnerabilities which involve the absence of identity documents, unsecured employment, poor living conditions, poor wages, unsafe working places and lack of medical facilities.<sup>4</sup> Women migrant workers are especially vulnerable to sexual harassment, trafficking and exploitation. The reason why many migrant workers are not under formal labour protection is that they work in the informal sector where they are not given any written contracts.

This situation was revealed by the COVID-19 pandemic that demonstrated the high level of insecurity of migrant workers<sup>5</sup>. Millions of migrant labourers lost their jobs, were compelled to go back home without transport, food or pay, when the country went into nationwide lockdown. The lack of proper labour welfare systems and social security insurance were revealed in this humanitarian crisis.

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<sup>4</sup> Guy Standing, *The Precariat: The New Dangerous Class* (Bloomsbury 2011).

<sup>5</sup> National Human Rights Commission, *Rights of Migrant Workers in India Report* (2021)

Migration also poses socio-economic problems including cultural displacement, separation of families, child labour and depriving the migrant children of education. In spite of such challenges, migrant labour plays an important role in the productivity of a country, building and reconstruction of infrastructure and remittances.

The migrant workers need protection thus necessitating a holistic legal framework that provides equality, dignity, decent working conditions, fair wages, health protection and social security.

The international organizations including ILO have continually highlighted the importance of rights based labour governance as a way of avoiding exploitation and promoting labour justice.

### **Protection of Migrant Workers and International Labour Organization.**

Another organization that has assisted in the formulation of international labour standards to protect the migrant workers is the International Labour Organization. The ILO which was established under the treaty of Versailles in 1919, is the one that seeks to advance the cause of social justice and internationally agreed upon labour rights. The organization has a three-party model which comprises of governments, employers and workers.

One of the first international documents that addressed migrant labour is the Migration for Employment Convention, 1949 (Convention No. 97).<sup>6</sup> It imposes upon the member states the equality of treatment of migrant workers and the nationals in terms of wages, working conditions, social security and rights to trade unions. The convention also requires the spread of the correct information on migration policy and job opportunities.

The other valuable tool is the Migrant Workers Convention, 1975 (Convention No. 143) that focuses on irregular migration and abusive labour practices.<sup>8</sup> It commits states to curb the unlawful trafficking and provide migrant workers with equality of chances and treatment regardless of their nationality, race, religion, or sex. The convention acknowledges the basic human rights of migrant workers and it aims to eradicate the exploitation of migrant workers by recruiters and employers.

ILO also has embraced conventions that address forced labour, discrimination, occupational safety and social security that indirectly safeguards the migrant workers. These are Convention

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<sup>6</sup> International Labour Organization, Migration for Employment Convention (1949).

<sup>8</sup> International Labour Organization, Migrant Workers Convention (1975).

No. 29 on Forced Labour, Convention No. 111 on Discrimination and Convention No. 102 on Social Security Minimum Standards.

Besides conventions, the ILO advances the Decent Work Agenda that focuses on productive employment, rights of workers at workplace, social protection and social dialogue. The ILO has initiated a fair recruitment program which is aimed at controlling the recruitment companies and eliminates trafficking and debt bondage among migrant workers.

Nevertheless, these international standards have been a challenge to implement since most countries are yet to ratify important conventions. An example is India who is not a signatory to Convention No. 97 and Convention No. 143. However, ILO principles still play a role in domestic reforms of labour and judicial interpretation.

ILO is more than a standard-setter. It offers technical support, research, labour statistics and policy advice to member states. The ILO fosters human migration governance and protection of employees rights in the world through international collaboration and surveillance systems.

### **Migrant Workers in India and the Constitutional and Legal Protection.**

The Indian Constitution ensures various fundamental rights which indirectly safeguard migrant workers. Article 14 provides equality before the law and equal protection of the law. Article 19(1)(d) and (e) give the freedom of movement and residence within the entire India. Article 21 secures the right to life and security of personal liberty which has been viewed broadly to encompass the right to livelihood, health, shelter, and dignity.

Article 23 is against human trafficking, forced labour, and begar. Article 24 does not allow the use of children under fourteen years old in dangerous jobs. Articles 39, 41, 42 and 43 are called Directive Principles of State Policy, which is to provide humane working conditions, living wages, social security and welfare to labourers.

To control the employment and hiring of migrant workers by contractors, the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, was passed.<sup>7</sup> The Act offers registration of establishments, licensing of contractors, payment of displacement allowance, journey allowance, wages, housing, medical facilities and protective

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<sup>7</sup> Inter-State Migrant Workmen Act, 1979.

clothing. Nonetheless, it has not been very effective due to poor implementation.

The Occupational Safety, Health and Working Conditions Code, 2020, is the compilation of several labour laws with the provisions of inter-state migrant workers. The Code brings about the registration of the database, portability of the welfare benefits, and journey allowance. In the same manner, the Code on Social Security, 2020, aims to cover social security schemes to the unorganized and migrant workers.

Other significant acts are Minimum Wages Act, Equal remuneration Act, Employees compensation Act and Building and other construction workers act. These acts offer labour rights, compensation on work related injuries, welfare program and wage protection.

The judicial activism has also led to labour welfare. In the case of People's Union for Democratic Rights v. Union of India, the Supreme Court said that failure to pay minimum wages is a form of forced labour as provided in Article 23.<sup>8</sup> In *Bandhua Mukti Morcha v. Union of India*, the Court stressed the role of the state in safeguarding bonded labourers and providing them with the humane working conditions.

Despite the comprehensive labour law system in India, the migrant workers are still exposed to exploitation as a result of laxity in enforcement, corruption, ignorance and informal employment.

### **The Problems with Migrant workers.**

The migrant workers are faced with various legal, economical and social issues, which erode their dignity and labour rights. Informal employment, lack of written contract or job security is among the biggest problems. The majority of migrant workers belong to unregulated industries and the labour laws are not well enforced.

The issue of wage exploitation is still widespread. Employers tend to pay late, less than minimum wages or refuse to pay overtime. Discrimination is also in the form of language, ethnicity, caste or regional identity of migrant workers. Women migrants are often subjected to gender discrimination, poor working environments and sexual exploitation.

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<sup>8</sup> People's Union for Democratic Rights v. Union of India, AIR 1982 SC 1473

Another issue is the absence of social security. Migrant workers are not usually included in health insurance, pension plans, maternity, and accident insurance. The migrant workers find it difficult to gain ration cards, healthcare, and social services in the states they have migrated to as welfare benefits are mostly attached to the place of residence.

Unfavourable housing and sanitation contribute to the vulnerability of workers. A good number of labourers live in congested, makeshift communities that do not have clean water, toilets and electricity. Safety measures and protective gear are not available making occupational hazards and accidents at the workplace common.

Migrant workers are also victims of human trafficking and forced labour especially in the activities of brick kilns, domestic work, agriculture and mining. Recruitment agents are often unscrupulous and are known to deceive workers with promises and debt bondage schemes.

These challenges were boosted by the COVID-19 pandemic. Lockdowns brought about mass unemployment, food insecurity and forced displacement. The workers had to walk hundreds of kilometres home because of their inability to travel and government support. The crisis highlighted shortcomings in labour databases, social security systems and inter-state coordination.

The knowledge of the law among migrant workers is very low. Lack of literacy, poverty and fear of being retaliated against, discourages workers to go to courts or labour authorities. The language barrier and long judicial process are also other barriers to accessing justice.

To overcome these challenges, there should be more powerful labour controls, social security everywhere, portable welfare, efficient grievance mechanisms and more responsibility of employers and contractors.

### **Court treatment of the rights of migrant workers.**

Indian judiciary has been transformative in widening labour rights and guarding the vulnerable workers with liberal interpretation of the constitution. The Supreme Court has reiterated that the rights to labour are inherent to human dignity and social justice.

The Court has broadened the meaning of Article 21 in *Maneka Gandhi v. Union of India* to cover procedural fairness and substantive due process. This understanding was the basis of the

acknowledgement of socio-economic rights such as livelihood and human working conditions.

In the case of *Olga Tellis v. Bombay Municipal Corporation*, the Supreme Court decided that the right to livelihood is part of the right to life in Article 21.<sup>9</sup> This ruling is especially relevant to migrant workers who rely on the daily wage jobs.

In the case of *Bandhua Mukti Morcha v. Union of India*, the Court dealt with the issue of bonded labour and instructed the government to locate, liberate and rehabilitate bonded labourers. The Court pointed out that the state has the constitutional duty to provide the humane working conditions and to guard workers against exploitation.

Equally, in the case of *People v. Union Democratic Rights v. Union of India*, the Court decided that the remuneration that is lower than minimum wages amount to forced labour which is forbidden in Article 23. The judgment enhanced labour rights of the construction and migrant workers.

In the COVID-19 pandemic, the Supreme Court in *In Re: Problems and Miseries of Migrant Labourers* instructed governments to offer food and shelter, transport and welfare services to migrant workers who are stranded. The Court recognized the humanitarian crisis and stressed the concerted action of states.

The High Courts have also stepped in to ensure that migrant workers are not denied pay, unsafe work environment, and arbitrarily dismissed. Judicial activism has thereby broadened the constitutional concept of labour welfare and state responsibility.

Nevertheless, critics believe that judicial interventions do not provide a solution to systemic labour problems only. The implementation delays, absence of monitoring and administrative inefficiency still undermine the effect of the court directives. The achievement of labour rights entails a coordination of legislative, administrative and judicial reforms.

### **Reforms and Action to be taken to effectively protect migrant workers.**

India and the world at large need to go through wholesale changes in order to reinforce the system of migrant labor protection. Universal registration of a national database of migrant

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<sup>9</sup> *Olga Tellis v. Bombay Municipal Corporation*, AIR 1986 SC 180.

workers and its maintenance is one of the main requirements. Governments can also utilize digital registration systems to deliver special welfare benefits and emergency aid.

It is also important that social security benefits can be ported. Whether it is geographical location, migrant workers need to be able to receive ration cards, healthcare, insurance, pension, and education. The One Nation One Ration Card program is a significant move towards this direction.

Mechanisms of enforcement of labour laws should be enhanced. To avoid abuse and trafficking, periodic checkups, harsh punishment of exploitative employers and control of recruitment agencies are required. Mechanisms of fast-track labour dispute resolution should also be put in place.

Internationalisation of the main ILO conventions regarding migrant workers would also enhance the resolve of India towards international labour standards. Labour governance and accountability through incorporation of ILO principles into domestic legislation can be enhanced.

Migrant workers need to be empowered by awareness campaigns and legal aid services. The workers are to be acquainted with wage rights, social security plans, grievance processes and occupational safety standards. The trade unions and the civil society organizations can also be significant in the labour mobilization and advocacy.

The migrant labourers should also be provided with better housing and healthcare infrastructure. Employers should be required to construct safe housing, sanitation, clean drinking water and hospitals. Special protection against gender-based violence and harassment is needed by women migrant workers.

Technology can be used to help in the administration of labour welfare in the form of mobile applications, digital payments, online grievance portals and labour helplines. Governance can be enhanced through data based governance.

Lastly, the protection of migrant workers needs to be considered on the basis of human rights as opposed to an economic perspective. Dignity, equality, social inclusion and decent work should be at the forefront of policies. International collaboration between the states, employers and the labour organizations is necessary to achieve safe and equitable migration systems.

## **Conclusion**

The migrant workers are the foundation of the economic growth and industrial development of the world. With their large contribution, they are one of the most vulnerable segments of the society because they are exploited, work in unsafe conditions, receive lower wages and have no social insurance. The international labour organization has played a major role in protecting the migrant workers in relation to its conventions, labour standards and promoting the decent work principles. International documents like Convention No. 97 and Convention No. 143 lay stress on equality and dignity and labour justice to migrant workers.

India has come up with constitutions and labour welfare laws to safeguard migrant labourers. Articles 14, 19, 21, and 23 form the foundation of the realization of equality, freedom, dignity and protection against exploitation. There are legislations like the Inter-State Migrant Workmen Act and the Occupational Safety, Health and Working Conditions Code which aim at controlling the employment terms and offering welfare. Cases have also widened the scope of protections on labour by the progressive interpretations of constitutions.

But, the actual practice is still poor because of the inefficiency of the administration, poor enforcement, absence of awareness, and informal employment systems. The COVID-19 pandemic revealed the vulnerabilities of the system in labour governance, and it showed that the reforms are highly necessary. Issues of housing, medical care, social security, trafficking, and work exploitation remain a problem to migrant workers.

The protection of migrant workers should be enhanced by enforcing labour laws and providing universal social security, portable social welfare benefits, legal awareness, and responsibility of employers and contractors. The labour governance can also be enhanced by ratification and compliance with the ILO standards. Finally, the safety of migrant workers is not only a legal requirement but also a moral and constitutional duty that is crucial to attaining social justice, human dignity, and integrative economic growth.

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