

## PROTECTION OF MIGRANT WORKERS THROUGH LEGISLATION

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### ABSTRACT

*Article 19(1)(d) and (e) of the Indian Constitution guarantees every citizen of India right to move freely throughout the territory of India and to reside and settle in any Part of the of the Territory of India. This right is subject to reasonable restrictions imposed by law in the interest of the general public or for the protection of the interests of any Scheduled Tribes. This has been a very welcoming right enjoyed by every citizen of India. But there remains an ambiguity that how will the state ensure the protection of this right? How can the contractors and employers of these migrants be made responsible for preserving these rights, especially when they are dispersed? The reverse migration during the pandemic at the national and international levels has forced everyone to ponder over this issue.*

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**Keywords:** *Indian Constitution, Territory of India, Scheduled Tribes, Pandemic.*

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### Introduction

If we go in the background of industrialization we find that Industrial revolution of 18th and 19th century brought many changes in Indian economy, which used many resources for production like labor and capital. Capital and labor were termed as the most prominent and important sources of production processes was felt that in order to continue with uninterrupted flow of production, various labor standards should be followed and there should be certain policies for the welfare of the workers. It was with this objective in mind that the international labor organization (ILO) was established in 1919.

After the Second World War universal declaration of human rights was adopted by United Nation General Assembly. But the universal declaration of human rights were done on December 10th, 1948, which proved to be the most important instrument defining social, economic, and political policies. This has been adopted by many of the developed and developing countries for the welfare of the workers. Most of the countries in the world have compiled these human rights declared on December 10 th, 1948 in their constitutions.

In 1991, new Industrial policy was formulated in India, which emphasized globalization and liberalization. With the growing industrialization, the need and importance of human force working in the industrial sector has also grown. The need was for the development of satisfied workers and to provide them congenial and positive working conditions in which they can contribute whole heartedly. This paved the way for the introduction of various types of freedom and rights for men, working women, children to maintain dignity of human life in society and development of society as per labor r standards.

### Labor Acts and Legislations for the Protection of Labor

It is a well-recognized fact that in order to maintain a congenial environment at the working place and to get the maximum output while maintaining a high morale of the workers, state has to intervene and protect the workers. This is possible only when legislation plays its role efficiently. Keeping in mind this, the government of India has passed different acts and laws to safeguard the interest of the working community. Some of these are Trade Union Act 1926, The Minority Act 1948, Employee State

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Insurance Act 1948, Industrial Dispute Act, Industrial Disputes Declaration act. Payment of Bonus act 1955, Personal Injuries (Compensation Insurance) Act 1963, Maternity Benefit Act 1967, Central labor act, Bonded Labor System (Abolition Act 1976), Equal Remuneration Act 1976, Inter-State Migrant Workmen (Registration of Employment), Conditions of Service Act 1979., The Child Labor ( Prohibition and Regulation act).

All these acts are applicable for workers in the organized sector only. This raises questions like what about the labor in the unorganized sector. Do they get these protections by these laws or not? The fact is that 92 % of the workforce in India is employed in the unorganized sector.

- **Migrant Worker Concept:** Migrant workers are those workers who migrate from one place to another within the state or country in search of full time, part time or seasonal employment. These migrant workers are often named as 'footloose' because they keep shunting between villages and cities invariably. This is prevalent due to the temporary status system in the cities. They are compelled to lead a transient and isolated life totally disconnected in the cities.
- **Problems in the Inter-State Migration:** Jurisdictionally they lose their bounded citizenship rights. For example, labor migrating from one state to another may lose right to various state health schemes and public distribution schemes. Other difficulties faced by these migrants may relate to lack of basic services, education and employment opportunities, language barriers, absence of local ties which will have an adverse impact on their collective bargaining powers. They do not have any job security. They can not avail any social protection schemes and housing and tenure rights. Above all they have to face the social stigma. These migrants at times have to undergo a vulnerable experience due to their caste, religion, economic status or gender compounded by insecure livelihood options It is being observed that inadequate provisions of infrastructure governmental mechanism and insufficient public services in cities, states are not prepared to address the influx of migrants.
- **Beginning of Migration in India:** It started in India during British Colonial rule. Migration of workers began to fulfill the requirements of capitalist's development in India and other countries. Labor was migrated to mining, Plantation and manufacturing. The process was made operative in such a manner that men moved to work whereas women and children stayed back in the rural areas.
- **Factors behind migration:** Basically there are two kinds of factors which lead to migration of workers.
  - **Push Factors:** These are the factors which compel him to leave the place and migrate. These arise due to such Factors as scarcity of food, earthquake and natural calamities. Agriculture is the main occupation in India. Due to droughts, floods natural calamities etc., they are deprived of any work in their native place. During off season, there is fall in production, that leads to disguised unemployment
  - **Pull Factors:** These emphasize on the situation of the destination. Attraction of city life, education and health services etc. Besides these, development of backward community, job opportunities and training facilities also attract him to the urban areas from villages. If we look at their way of working we find that their marginal utility is zero. Therefore if they continue to remain in agriculture sector, they will not add anything to total production.

Under these circumstances these agriculture workers prefer to move from such areas to those places where there are more jobs opportunities. We may conclude here that these agriculture and other workers decide to migrate from drought prone areas to irrigated and industrially developed areas. They may find it better to move to urban areas from their native places.

There have been various studies on the plight of migrated workers. These studies have stated that this class of workers who have migrated to industrial areas for long time, are provided with facilities to line with camp by their contractor's themselves. This way he is able to work with the help of labor gang system and save his cost. These migrants are often found working in the lowest paid jobs without any job security.

Karl Marx, "the socialist author states, Labor Gang system is decidedly the cheapest for the land and factory owners and decidedly worst for the children and migrant workers".

- **Difficulties Faced by Migrants:** Migration of workers poses such a tough situation in front of all of us. So question arises how should we handle this difficult situation? What policy should we adopt to save these rural migrated workers, landless farmers and other migrants?

As per the estimates of The National Commission on Rural Labor (NCRL) 1991, there are more than 10 million circular migrants in rural areas. Out of these 4.5 million are inter-state migrants and 6 million intra state. Besides these there are a huge number of seasonally migrant workers in agriculture, brick kilns, construction industry, quarries and fish processing. These internal migrants cannot access the social protection entitlements due to the absence of identity and residence proofs and remain excluded from government sponsored programs and schemes. Children face disruption of regular schooling, thus negatively affecting their human capital formation. Migrants are often projected as a “burden” to society, discouraging them from settling down and they do not form a part of the urban planning initiatives. They are denied basic rights by the government in policy and practice.

Migration and urbanization are an integral part of economic development and societal transformation, and historical experience has shown that it cannot be stopped. They have contributed largely towards the growing trend of GDP. Migrants are indispensable and invisible key actors of socially dynamic, culturally innovative and economically prosperous societies. An independent study examining the economic contribution of circular migrants based on major migrant employing sectors in India revealed that they contribute 10 per cent to the national GDP (Deshingkar and Akter, 2009).nd magnitude. There is an urgent need to develop a governance system for internal migration in India, i.e. a dedicated system of institutions, legal frameworks, mechanisms and practices aimed at supporting internal migration and protecting migrants.

At times it becomes difficult for these migrants to receive many of these services in the absence of Aadhar card, as the government made Aadhaar cards mandatory for availing some of the public services and benefits such as education, health care, bank accounts, employment, and even a mobile phone connection. In the absence of Aadhar the migrants during coronavirus pandemic have been a gamechanger in many ways. The announcement of a complete lockdown by the government in March was devastating for humanitarian and internal migrants alike. These migrants in cities working for cash wages with little or no savings, the complete shutdown of economic activity meant an end to their income and means of sustenance.

As per the law these migrants should be documented and registered in their host state and consequently entitled to benefits like equal wages, displacement and travel allowances, regular payments, provisioning of suitable accommodation, and free medical facilities. The pandemic revealed the way the implementation of these laws has lagged. The reverse migration in such a large number during attracted domestic and international attention and prompted the Supreme Court to take action of its own violation and direct the government to provide food, shelter, and transportation to the migrants. The migrants’ underlying vulnerability was fully revealed.

An event of the magnitude of the coronavirus outbreak holds lessons for policymakers and practitioners about ensuring that the most vulnerable have a reliable safety net. For one thing, a clear policy from the government at the outset would have been helpful. For instance, when Prime Minister Narendra Modi announced the lockdown on March 24, Looking forward, some policies will likely change, such as those around work or public benefits available to workers. To encourage business, some states have already announced modifications to labor regulations that will increase the amount of time employees can work during a single shift or in one week. However, these changes could come at the cost of the health and safety of workers. The Indian government has been working on reforms to labor laws since well before the pandemic, although its objective has largely been to improve the environment for business rather than create stronger protections for laborers. The pandemic has exposed the vulnerability of these workers, who had previously been largely ignored in national discourse.

Given these apparent vulnerabilities, labor reforms should be crafted with a priority of ensuring workers’ welfare. For instance, occupational safety and health, previously an area of concern only on paper, should be given paramount importance in practice, especially in light of new norms around social distancing and the importance of early medical intervention to battle the outbreak. For asylum seekers, these legal reforms should not be limited solely to labor protections but also be more holistic, to include ensuring their legal status as residents in the country.

#### **Steps taken by the Government to Protect Migrants**

Some efforts have been made by the government of India to protect the migrants by passing laws such as the Inter State Migrant Workmen Act of 1979, which regulates the hiring, pay, and working conditions of internal migrants. But this has also not helped this class of workers much as its complex legal machinery can be bewildering to those it is intended to protect.

Swami Vivekananda had once said, "An ounce of practice is worth twenty-thousand tons of big talk". The entire post-lockdown scenario vindicates the fact that the lockdown was a half-baked, knee-jerk exercise that has resulted in an unprecedented human disaster on a scale unseen since Independence. This could have been averted had there been a well-thought out plan in anticipation of the magnitude of this looming corona menace. Can we ignore the fact that if these migrants do not return to their workplaces after the lifting of the lockdown, several critical economic activities will take a hit? The structure of our economic activities has evolved in such a manner that migrants - from within or outside their respective state - have an integral role to play.

The question is whether the government has maintained records of the migrant workers of our country. Here we find that the government is in the dark about the status of the migrants. On the one hand, these workers have lost their livelihoods abruptly. Their hard-earned money - otherwise remitted to their homes to cater to the needs of their families, and means of survival for them was wiped out instantly.

The lockdown has forced us to think specifically about migrants, whether they are skilled or unskilled workers, blue-collar workers or white-collar workers. Appropriate facilities should be created at all places to address their problems. There is a need to match demand and supply for their skills, and the employers have to be sensitive enough to create required facilities for them. Hence, a law is needed to deal with any adversities that the migrant workers may confront in future in a holistic manner. Migrant workers must be able to believe that this is a country for all, without any discrimination. They do not require mercy, they should be allowed to live with dignity.

One of the most important Act passed by the government of India was the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) act 1979. Here the onus lays on the contractors and employers to register workers and uphold their rights, but the small-scale and dispersed nature of migration makes this virtually impossible to implement. Additionally, the Act does not apply to establishments with less than 5 inter-state migrant workers or workers without a contractor, excluding a large number from these safeguards. (Srivastava and Sasikumar 2003).

The policy of maintaining data on these on internal migrants was followed at some places but the pandemic exposed its limitations with little information readily available on workers' location or occupations (Ahamad 2020). The most recent data available on these migrants is the Census of 2011, itself is almost ten years old and fails to adequately provide information on short-term circular migration.

The migrants who were asset less and with weak social network were at the most disadvantageous position. They are also characterized by poor access to social protection. They were also deprived of the right to food, implemented through the public distribution system. As this system is based on residence in a particular state and therefore it ceases to exist for those migrant workers who move across state borders (Drèze and Khera 2013). MacAuslan (2011) suggests making ration cards mobile within and between states to ensure universalization of access. This idea gained momentum during the lockdown and became a symbol for the portability of rights and social provisioning.

### **Suggestions**

In view of the numerous problems, sufferings of the migrants during extraordinary circumstances which these migrants were subject to in the recent periods and the shortcomings in the legislation and its implications, we must follow these suggestions. The minimum wages regulation should be strictly followed by every organization and employers. The Ministry of labor should set up a committee to review this from time to time. It is also being felt that in respect to wage structure there is a need for gender equality. There should be 24=7 women helpline. There is a need for creating a digitized data base of all the migrants.

There should be a constant reviewing of the trend of migration in India and the impact on rural areas, urban areas and towns. The states and union territories should have nodal officers dedicated specifically only to handle the issues relating to migrant workers.

There should be periodical health check-ups, screening, testing and provisions for providing health care services to the migrants. The state of origin should collect and maintain the data of these workers migrating to other places and this information they must share with the destinations to which they are moving. This data base should have every detail regarding the workers and their accomplice. A proper format should be drawn by responsible authorities. Data should also be maintained to ensure that these migrants get enrolled for all the welfare and security schemes of the state government. A close supervision and control should be maintained with the Ministry of Labor Welfare.

This whole data may also be shared with the concerned Labor authorities to ensure that laws relating to minimum wages, healthy and safe working conditions and other measures for the welfare of migrants are duly complied with. It should be insured that the insurance and pension schemes promoted by the government for the welfare of these migrants must benefit them. Wherever possible, state may pay the premium for these plans. One of the most important steps to be taken in this direction would be to educate and impart awareness amongst these workers and employers about the welfare schemes run by the government including the pension and insurance plans. In the absence of such an awareness program the efforts done will not reap the benefits.

The weaker sections of these migrant workers may be identified and state government should make arrangements for their ration at the time of crisis. Some special arrangements and provisions should be made for these migrant workers like one time transportation allowance to their native place (e.g. central government gives home town travelling allowance to its employees). State government must ensure that these workers are paid as per the compensation fixed by them and a check should be maintained on the employers. Wherever possible housing arrangements may be ensured for the migrant workers. For this working hostels can also be a good option. It was observed that some of the states had made some rules regarding the domicile for employment purposes, which is disadvantageous to migrants. Therefore states should be suggested to remove this kind of requirements.

A proper attention must be given to make arrangements for the education of children of these migrants. This is necessary to create future human capital. The enrolment of the children of migrant workers in schools where kind of they are staying must be ensured by concerned state government. The states should make an effort for the implication of the provisions of Inter State Migrant Workmen Act, 1979, such as displacement allowance, provision for housing facility etc.

These efforts should be done by the states on a continuous basis. A periodical review of the activities, situations or circumstances affecting the working and benefits of the migrants must be done to ensure their applicability and corrective measures be ensured.

Along with these major schemes there should be a system to redress their grievances. This can be done by starting a toll free helpline number to provide assistance. This will be actually helpful only if this number is properly displayed. As being pointed out by many that the right to food is implemented through the public distribution system is on the basis of the residence and therefore they tend to lose this right on account of migration. To remove this barrier these ration card should also be made mobile within the country to make it universally applicable.

### **Conclusion**

The outbreak of coronavirus holds lessons for the government and decision makers. They have to ensure utmost safety to the most vulnerable section like at the time when prime minister announced the lockdown on March 24th, a proper clear policy could have helped. The pandemic has exposed the vulnerability of these workers, who had previously been largely ignored in national discourse. Although some of the states have announced and adopted certain changes in the labor regulations to benefit the migrants. These may increase the duration of working hours during a single shift or in a week. Alas; these amendments have been possible at the cost at the cost of our migrant workers' health and safety. Our government has also been trying to create an environment friendly business conditions by introducing certain changes in the labor laws well before the pandemic, although the aim has been largely to improve the business environment rather than welfare and protection of the migrants. The pandemic has exposed the vulnerability of these migrants who have always been ignored by the government. Keeping in view this weak position of the migrants and their vulnerability, all the labor laws should not remain only on papers. Labor reforms should be drafted with an utmost priority for the labor welfare.

### **References**

- ✓ Coronavirus Lockdown: How to Keep 130 Million Migrant Workers Afloat During COVID-19 Crisis. See [www.businesstoday.in/opinion/columns/coronavirus-lockdown-130-million-migrant-workers-afloat-covid-19-crisis-unorganised-sector/story/400806.html](http://www.businesstoday.in/opinion/columns/coronavirus-lockdown-130-million-migrant-workers-afloat-covid-19-crisis-unorganised-sector/story/400806.html) (last checked 24 April 2020), Google Scholar.
- ✓ Coronavirus Pandemic/AIIMS Urges Medicos to Reuse N95 Masks to Tackle PPE Shortage. See [www.moneycontrol.com/news/trends/health-trends/coronavirus-pandemic-aiims-urges-medicos-to-reuse-n95-masks-to-tackle-ppe-shortage-5123211.html](http://www.moneycontrol.com/news/trends/health-trends/coronavirus-pandemic-aiims-urges-medicos-to-reuse-n95-masks-to-tackle-ppe-shortage-5123211.html) (last checked 24 April 2020), Google Scholar.

- ✓ Coronavirus: Shortage of PPE, Masks Easing, Says Govt. See <https://timesofindia.indiatimes.com/india/shortage-of-ppe-masks-easing-says-govt/articleshow/75000703.cms> (last checked 24 April 2020), Google Scholar.
- ✓ Covid-19: IMA Warns of Black Day on April 23 if no Action Taken. See <https://timesofindia.indiatimes.com/india/covid-19-ima-warns-of-black-day-on-april-23-if-no-action-taken-against-attacks-on-doctors/articleshow/75254142.cms> (last checked 24 April 2020), Google Scholar.
- ✓ How India Scaled Up PPE Production. See <https://timesofindia.indiatimes.com/india/0-to-12000/day-how-india-scaled-up-ppe-production/articleshow/75038389.cms>. 0 to 12,000/day (last checked 24 April 2020), Google Scholar.
- ✓ India Fights Corona COVID-19. See [www.mygov.in/covid-19/?cbps=1](http://www.mygov.in/covid-19/?cbps=1) (last checked 24 April 2020), Google Scholar.
- ✓ India has Tremendous Capacity in Eradicating Coronavirus Pandemic. Geneva: WHO, Google Scholar.
- ✓ India Scores High on Covid-19 Response Tracker Made by Oxford University. See [www.indiatoday.in/india/story/india-scores-high-on-covid-19-response-tracker-made-by-oxford-university-1665573-2020-04-10](http://www.indiatoday.in/india/story/india-scores-high-on-covid-19-response-tracker-made-by-oxford-university-1665573-2020-04-10) (last checked 24 April 2020). Google Scholar.
- ✓ Tablighi Jamaat Responsible For 30% Total Coronavirus Cases In India: Health Ministry. See <https://news.abplive.com/news/india/tablighi-jamaat-responsible-for-30-total-coronavirus-cases-in-india-health-ministry-1201263> (last checked 24 April 2020), Google Scholar.

