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VIOLATION OF SOCIAL SECURITY AND HEALTH RIGHTS OF MIGRANT WORKERS

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I. ABSTRACT

India, a nation of 29 states and 7 UTs, is well renowned for its diversity and unity, however, these qualities also have certain flaws due to the country's failure to uphold them. The Constitution states that no discrimination should be made on the grounds of sex, colour, religion, and place of birth, everyone should be treated equally. However, the same effort is futile when it comes to migrant workers who face discrimination in some areas when they move for employment. The rights of migrant workers continue to be infringed despite numerous pieces of legislation, constitutional clauses, and governmental initiatives.

II. KEYWORDS:

COVID-19, Lockdown, migrant workers, Supreme Court of India, Violations, Labours, Shutdown, health rights, social security

III. INTRODUCTION

Due to the blending of many cultures, migration has played a vital role in shaping civilisations and economies throughout human history. Over the past few decades, the movement for economic and financial goals has been viral. Millions of people relocate from poor to developed nations for better economic opportunities and quality of life. As more and more migrant workers were subjected to exploitation, several issues surrounding migrant workers' labour rights have arisen.

So, a migrant worker is someone who migrates from one state or country to another state or country in search of seasonal, part-time, or temporary employment and intra-state migration is when the workers move within the same state. So, for example, say

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a worker moves from Varanasi to Kanpur or Vadodara to Ahmedabad etc. then those workers are put under intra-migration.

It is a severe worry worldwide when employers violate workers' rights. With their lack of economic independence and social protection, migrant workers are particularly susceptible. When such workers are made unemployed, there are significant risks involved.

The migrant workers' contributions help the nations develop, but it is a harsh fact that they are the group that the government and society most frequently ignore. It is unlikely that the majority of Indians are aware of the Inter-State Migrant Workmen Act, which places additional emphasis on areas like:

- Registration is a requirement for any establishment hiring migrant workers from another state.
- The clause also mentions contract labourers; if the contractor is outsourcing labour to an establishment, they must obtain a licence.

Since a substantial portion of interstate migrant workers live in dire conditions and face several health-related dangers, social protection and health treatment for them are neglected. The Inter-State Migrant Workmen Act², which governs migrant workers, is mostly unknown in India. Positive aspects of this law include the requirement that businesses that hire interstate migrant workers register them and that contractors that subcontract labour to these businesses obtain a licence. Many reside in housing complexes and labour camps where environmental sanitation is poorly maintained. Most migrant labourers, particularly those employed in construction, are housed in cramped quarters with the barest necessities. Numerous health issues are brought on by overtime work for interstate migrant workers. To guarantee that they can effectively manage their risks, given the normal life cycle of migrant workers, social security needs additional consideration. Due to their interstate travel and subsequent exposure to several social security and labour markets, they are particularly vulnerable.

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

Additionally, other factors frequently impede access to social and essential services in the new host State. Interstate migrant workers' vulnerability is seriously questioned by their inability to obtain essential services and the portability of their social security benefits. For migratory workers, not having access to rights and entitlements is a significant challenge. The host state may restrict migrant workers' access to social security and other essential services when they move to a new state, which raises concerns about their vulnerability.

IV. INDIAN LAWS GOVERNING MIGRANT LABOURERS

What is the typical query that comes to mind when considering necessary labour rights? Yes, social security and decent working conditions are discussed in this segment. During the French Revolution in 1793, social security was first introduced. The rights of labour are protected under the Indian Constitution. Part IV of the Constitution's Preamble, Fundamental Rights, and Directive Principles of State Policy all have limitations on this topic. The Constitution guarantees a minimum set of rights in the workplace. This enables workers and employees to turn economic prosperity into social security. The only way integrated growth is feasible is if all workers are given an equitable set of rights. The Indian Constitution encourages and prescribes social fairness for workers, according to the Preamble³. Government social security programmes coexist with numerous labour-specific laws. The laws that govern migrant labour in India are as follows:

V. EARLIER LEGISLATION PASSED BY THE PARLIAMENT FOR THE RIGHTS OF THE LABOURS

1. Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979

This law's main objective is to aid migrant labourers. The legislative framework is divided into 7 chapters. The law covers the necessity to provide workers with welfare

³ Legal Service India, <https://www.legalserviceindia.com/legal/article-86-right-to-social-security.html>, (last visited September 2, 2022).

facilities, licences for contractors, duties and liabilities of contractors, and registration of businesses that employ migrant workers from other states.

2. *Payment of Wages Act, 1936*

Timely and quick payment of salaries is guaranteed by the Payment of Wages Act of 1936. A law was put into effect to combat exploitation, which includes the late payment of compensation. Additionally, it stops arbitrary fines from being imposed on migrant employees.

3. *Employees' Compensation Act, 1923*

This legislation makes sure that social security is extended to migrant workers' families in the form of compensation if a worker dies in an accident while performing their job and ultimately passes away or becomes disabled.

4. *The Maternity Benefit Act, 1961*

This law was set in motion with consideration for the social standing of migrant women workers and for securing their safety in certain establishments by preserving their employment during their maternity, including both before and after maternity.

5. *The Unorganised Workers' Social Security Act, 2008*

This act aims to bring forth unorganised sector workers with social protection and a welfare scheme. The term "unorganised sector," which includes migrant workers, is extensively detailed in the Unorganized Workers' Social Security Act of 2008.

VI. INTRODUCTION OF NEW LABOUR CODES

Four bills to integrate 29 central laws were introduced in 2019 by the Ministry of Labor and Employment. These Codes govern (a) Wages, (b) Industrial Relations, (c) Social Security, (d) Occupational Safety, Health, and Working Conditions, and (e) Wages. While the Code on Wages, 2019, was passed by Parliament, while the other three Bills were introduced on 19th September 2020. To offer social security coverage to the most productive workforce feasible in the organised and unorganised sectors, the Central Government passed the Code on Social Security, 2020 ("**Code**") on September 29, 2020, bringing together all the essential social security components.

VII. CONSTITUTIONAL ARTICLES DEALING WITH LABOURS' RIGHTS

The rights of migrant workers and labours are also protected under the specific articles of the Constitution of India, directly with labour rights.

- **Article 14⁴:** Everyone should be treated equally under the law.
- **Article 15⁵:** No discrimination should be made on the basis of caste, creed, religion, sex, place of birth etc.
- **Article 16⁶:** This article guarantee “equality of opportunity” for employment or other state-related appointments.
- **Article 19(1)(c)⁷:** The article declares that everyone has the right to form groups or unions.
- **Articles 24⁸:** Forbids child labour under the age of 14 in factories, mines, or “any other dangerous occupation,” respectively.
- **Article 23⁹:** It outlaws all forms of trafficking and forced labour.
- **Article 39(d):** Equal pay for equal work for men and women is proclaimed a Directive Principle of State Policy in Article 39(d)¹⁰ of the Indian Constitution. The phrase “equal pay for equal work for both men and women” refers to equal pay for equal effort for both sexes.
- **Article 42:** The state must “make provision for securing reasonable and human conditions of labour and for maternity relief,” according to Article 42¹¹.
- **Article 43:** According to Article 43¹², employees should be entitled to a liveable wage and “work conditions providing a fair quality of living.” By requiring the state to pass legislation to “ensure the participation of employees in the administration of companies,” Article 43A¹³, added by the Forty-second

⁴ Indian Constitution, Article 14.

⁵ Indian Constitution, Article 15.

⁶ Indian Constitution, Article 16.

⁷ Indian Constitution, Article 19(1)(c).

⁸ Indian Constitution, Article 24.

⁹ Indian Constitution, Article 23.

¹⁰ Indian Constitution, Article 39(2).

¹¹ Indian Constitution, Article 42.

¹² Indian Constitution, Article 43.

¹³ Indian Constitution, Article 43A, amended by The Constitution (Forty second Amendment) Act, 1976.

Amendment to the Indian Constitution in 1976, establishes a constitutional right to co-determination.

VIII. DISCRIMINATION & HUMAN RIGHTS VIOLATIONS: A WEAPON AGAINST MIGRANT WORKERS

A. AREAS OF HUMAN RIGHTS VIOLATIONS

In the same way that there is a woman behind every successful man, migrant workers play a noteworthy part in the progress and advancement of infrastructure, domestic services, manufacturing, etc., and they are currently the ones who are disregarded. The International Labour Organization's charter obligates support for social security initiatives and policies for those in need by guaranteeing them a minimum income. Social security¹⁴ systems offer the nine benefits outlined in the convention¹⁵: *medical care, sickness and maternity benefits, family benefits, unemployment benefits, employment injury, invalidity, survivor's benefits, and old age benefits*. The central pillar of an ethical society and a source of social legitimacy¹⁶ is social security. Given below are specific segments where the migrant workers are exploited the most:-

1) Lack of social protection for the workers

The rights of migrant workers are not outlined in bilateral agreements or national legislation in most developing nations. Therefore, they cannot take advantage of social security programmes in the countries they have relocated to. Workers are fighting for their labour and fundamental human rights in the globalisation period due to the increased casualisation of employment. Unorganised workers typically experience issues with unemployment and a lack of social security.

2) High health risk in their "3D" occupation

For migratory workers across a range of industries, health risks are a serious issue. Numerous ailments caused by their jobs or working circumstances affect migrant

¹⁴ The Code on Social security, 2020, Section 2(78), No. 36, Acts of Parliament, 2020 (India).

¹⁵ No. 102. ILO Social Security (Minimum Standards) Convention 1952.

¹⁶ Priti Garg, Globalizations: Its Impact on Labours, Volume 66, The Indian Journal of Political Science, 813, 820-830, 2005.

workers in the brick kiln and construction industries. Construction workers¹⁷ frequently suffer from lung ailments and accidents. Only 10% of workers around the world, according to ILO estimates, are provided with social protection that is appropriate. Many of them work in so-called "3 D jobs,"¹⁸ which are dirty, dangerous, and demeaning employment that expose them to various cases of abuse, most notably the denial of their right to health. No one is aware on a prior hand about any kind of mishappening that might lead a worker to death, and because they are rarely protected by life insurance, they lack necessary safeguards. Sometimes migrant workers' families are even denied compensation as a result of their non-registration since it is impossible to recognise the worker's face due to a lack of identity or documents. Additionally, due to weak financial grounds, families are also prevented from receiving the deceased member's body.

3) *Communication gap and language barrier as an obstacle*

Language is the main issue that migratory labourers and workers frequently encounter. Due to communication difficulties and the fact that migrant workers only speak their home tongue, there is a social divide that breeds mistrust between the locals and the workers. As a result, these employees are frequently mistaken as criminals during criminal activity.

4) *Lack of Identity proof and Unregistered Migrant workers*

The government ought to consider creating a separate ministry to handle matters about the population of migratory workers and the realisation of their legal, constitutional, and human rights. A method for registering migrant employees is urgently needed, the court ruled in *Shashank S. Mangal v. GNCTD*¹⁹. By not registering the workers, owners eventually make them deprived of their benefits, housing services, banking services, government flagship programs etc. Even the ISMWs are

¹⁷ Divya Ravindranath & Divya Verma, Seasonal Migration and Health in India: Constraints for research and practice, IDEAS FOR INDIA (September 14, 2022, 7:03 P.M.), <https://www.ideasforindia.in/topics/urbanisation/seasonal-migration-and-health-in-india-constraints-for-research-and-practice.html>

¹⁸ United Nations Human Rights, <https://www.ohchr.org/en/stories/2013/07/migrant-workers-their-right-health-care>, (last visited September 5, 2022).

¹⁹ *Shashank S. Mangal v. GNCTD*, 2020 SCC Online Del 677.

provided with fake ID proofs so that their real identities get concealed which later is used either for labour trafficking or to escape liabilities during any mishaps in the factories.

5) Conditions of women workers

Spotlight should also be placed on the health rights violation of migrant women workers, pregnant women, and young mothers who are denied access to various government programmes despite the Ministry of Women and Child Development's clear instructions to the State Governments to include the migrant population residing close to the worksite in the ICDS programme. Additionally, although being required to disclose the data to the government, it has been observed that builders frequently withhold information about the precise number of women employed on construction sites. The fact that female migrant workers do not receive any maternity benefits, maternity leave, or breastfeeding breaks at work and do not get hold of basic sanitation conveniences puts their health at risk and should be prioritised. Women worldwide always deal with such situations entirely due to the pervasive old-age stigma associated with women's hygiene²⁰. Also, the risk of sexual assault and exploitation is present for migrant women workers. Women migrant workers are employed in factories, including sugar mills, hand- and power-looms, and cotton ginning mills. This work is temporary, seasonal, and part-time²¹. Additionally, because they are frequently employed in sectors with low-skilled employment that are not fully protected by national labour laws and regulations, women migrant workers are more exposed to sexual harassment and other forms of exploitation.

6) Lack of proper health care services

Migrant workers do not always receive the proper health care treatment, which makes them more vulnerable to exploitation. In many regions, studies conducted proved that hospitals many times engaging with a worker's health first find out their residential status before treatment and the failure to prove that can lead them to denial of service.

²⁰ Dawson, C., Veliziotis, M., & Hopkins, B, Understanding the perception of the 'migrant work ethic', Volume 32, Sage Journals, 811, 811-830 (2017).

²¹ Women Migration in India: Evidence from Odisha, <https://www.cwds.ac.in/wp-content/uploads/2019/10/Women-Migrating-in-India.pdf>

A doctor should never treat a particular caste but rather a human. However, this is not the case for migrant workers because doctors, nurses, and medical staff often makes differential treatments for them. Additionally, they are excluded and taken advantage of for medical services due to the high price tag placed on them. The lack of knowledge regarding adequate governmental programmes available for them makes them more vulnerable.

7) Poor housing facilities for migrant workers

What an irony that those who contributed to the expansion of the housing, healthcare, and construction industries are now denied access to affordable and proper housing facilities. The accommodation facilities made available to migrant workers are frequently considered extremely unclean, with inadequate ventilation and crowded and cramped rooms. It has frequently been observed that 6 to 7 workers share a single room; some lie on beds and others on the floor. Additionally, they lack access to clean drinking water and sufficient restroom facilities, which worsens their quality of life. It has also been noticed that nearly 2500 migrant workers²² do not even get a roof to support themselves and lives in open space, getting deprived of the necessities along with threats of eviction.

8) Long working hours and wage discrimination

Section 25(1) (a) of the Occupational, Safety, Health and Working Conditions Code 2020²³ stipulates that a migrant worker should work a minimum of 8 hours per day and should be working only 6 days a week, but this is not followed. Instead, migrant workers work between 8 and 14 hours per day, and the majority of them do not receive adequate breaks or downtime for recreation or rest, which has a negative impact on their health. In other cases, the code's provision requiring employers to pay overtime to employees who labour beyond the regular working day is also disregarded²⁴. Most frequently, it is observed that workers do not receive the agreed-upon wage amount

²² Sangeeth Sugathan and Nivedita Jayaram, "Housing for all" means nothing to Indian Migrants, *ECONOMY*, (September 01, 2022, 7 P.M.), <https://thewire.in/economy/housing-for-all-migrant-workers>.

²³ The Occupational Safety, Health and Working Conditions Code, 2020, Section 25 (1) (a), No 37, Acts of Parliament, 2020 (India).

²⁴ The Occupational Safety, Health and Working Conditions Code, 2020, Section 27, No 37, Acts of Parliament, 2020 (India).

that was determined by the employer before recruiting the migrant worker. The intermediary, who takes care of his commission, is the cause. Another noteworthy fact is that, despite doing the same job and devoting the same amount of time, women are consistently paid less than males. In a decided case²⁵, the apex court noted that while the slogan “equal pay for equal work”²⁶ is undoubtedly regarded as a constitutional goal under Articles 14, 16, and 39(c) of the Constitution, it is not straightforwardly stated in our Indian Constitution as a Fundamental Right. As a result, in situations where there is an unequal distribution of pay, this right may be exercised based on irritational classifications.

9) *Lack of education for migrant workers’ children along with childcare facilities*

Additionally, nearly 40% of all children in the world’s labour force are employed in India, which has the highest proportion of working children worldwide. Compared to the formally organised sector, child labour in the unorganised sector is substantially higher. In India, child labour is one of the four fundamental labour standards that is egregiously violated. In India’s rural and urban areas, where economic development is uneven, it is impossible to implement uniform labour regulations about child labour²⁷. The OCH Code 2020 also restricts the employment of persons below 18 years of age in any hazardous factories or mines²⁸. The migrant children spend half their lives living on construction sites with their families, frequently being denied access to even the most basic rights and amenities like food and nutrition, health care, and education. Additionally, studies have shown that children between 6 and 18 are more likely to engage in child labour, and frequently drop out of school in the middle of their studies. Even government initiatives like the Right to Education and Samagra Siksha Abhiyaan fall short of addressing the problems faced by migrating children in India. Despite numerous government programmes for the education of ISMW children, the actual situation appears to be quite different. Children are forced to

²⁵ Randhir Sing v Union of India AIR 1982 SC 879.

²⁶ The Code on Wages, 2019, No. 29, Section 3(1), Acts of Parliament, 2019 (India).

²⁷ Mustafa Plumber, Child labour and child marriages increasing in rural areas as children are not going to school: Karnataka High Court, Livelaw, (September 14, 2022, 09:16 P.M.), <https://livelaw-nlul.refread.com/news-updates/child-labour-child-marriage-children-school-karnataka-high-court-166868>.

²⁸ The Occupational Safety, Health and Working Conditions Code, 2020, Section 70, No 37, Acts of Parliament, 2020 (India).

labour²⁹ alongside their parents because they are not provided with suitable education and because migrant labourers frequently move between states. As a result, their children's education is impaired, and they commonly drop out of school. The formation of a learning gap that subsequently makes it difficult for them to cope with the dynamic curriculum is another factor that may be noted for why they did not profit from the government's educational programme. The covid-19 pandemic has made it more difficult for these children to enrol in schools, and language seems to be a hurdle for them without peer support.

10) Exploitation of bondage labourers

Bondage and servitude have been reported in various unorganised industries, including brick kilns, stone quarries, construction of buildings and roads, plantations and agriculture. Among migrant labourers from underprivileged groups, such as Scheduled Castes and Scheduled Tribes, there is a higher prevalence of bonded labour. The repeal of bonded labour legislation³⁰ was created to combat restrictions on the right to freedom of employment. The legislation fell short of accomplishing this goal because it only addressed the many types of agrarian bondage that were still prevalent throughout India. In addition, due to their employment in the unorganised sector, contract-based migrant women workers who work in the agricultural sector, construction sites, brick kilns, and non-permanent, seasonal, part-time jobs are not eligible for maternity benefits³¹.

11) High risk associated with factory premises

The lack of sufficient safety equipment makes migrant workers in unregistered small-scale factories more vulnerable to danger because the employers get complete freedom to take advantage of the employees whenever they see fit because there are no administrative restrictions. You can often find Twenty persons in the Seelampur and Gandhinagar regions of Delhi working in a cramped space completing duties like cooking, sleeping, eating, etc. The situation gets complicated when they get trapped

²⁹ Indian Constitution, Article 24.

³⁰ The Bonded Labour System (Abolition) Act.1976.

³¹ Jain, M, SC Issues Notice On Plea Seeking Urgent Release Of 187 Bonded Labourers Held At Brick Kilns In Bihar, UP, Livelaw,(September 9, 2022, 11: 15 A.M.), <https://www.livelaw.in/top-stories/sc-issues-notice-on-plea-seeking-urgent-release-of-187-bonded-labourers-held-at-brick-kilns-in-bihar-up-157770>.

when a fire breaks out. The Occupational Safety, Health and Working Conditions Code, 2020, does not apply to some factory units, thus the owners can avoid liability by dividing their businesses into small parts to avoid regulations.

IX. IGNORANCE TOWARDS MIGRANT WORKER'S HEALTH ALONG WITH JUDICIAL REVIEW

In both routine and emergency circumstances, migrant labourers are among the most defenceless members of society. As they struggle to make a livelihood, they are frequently abused and compelled to work and live in appalling situations. Policymakers, contractors, and employers frequently fail to take their health and safety hazards into account. It's interesting to note that the expansion of the Covid-19 outbreak has reignited interest in internal migrant workers across the country, particularly among academics and civil society organisations. According to the 2011 census, internal migrants comprised over 453 million individuals or 37% of India's total population. 10.2% move interstate or intrastate, specifically in search of jobs (Bansal 2016). Even though 88 per cent of all internal migrants travel within the states, only 12 per cent of all movement occurs between states. Internal migration is a notable factor in economic development and poverty alleviation, particularly in rural areas³² of India. The court, in the case of *Abhijeet Kumar Pandey v. Union of India*³³, highlighted the scope and severity of the Covid-19 pandemic and advised the government to take an organised approach to provide the voiceless and underprivileged groups of society with appropriate and sufficient remedies.

The Convention on Migrant Workers (CMW), which provides the official sanction for the protection of migrants, has neither been signed nor ratified by India, despite the country having accepted many agreements of the International Labor Organization. Similar to the UN Convention on Migrant Workers, which outlines the global focus on migrant workers' human rights, India has not ratified either of them. Therefore, migrant workers' interests—including their health—are not protected. There aren't

³² De, S, Internal Migration in India Grows, But Inter-State Movements Remain Low, World Bank Blogs, (September 14, 2022, 7 P.M.), <https://blogs.worldbank.org/peoplemove/internal-migration-india-grows-inter-state-movements-remain-low>.

³³ *Abhijeet Kumar Pandey v. Union of India*, 2021 SCC Online Del 1859.

many instances of government policy in India that support the migrant community. The majority of migrant healthcare is currently provided by non-governmental organisations.

Due to malnutrition, poor overall health, limited access to preventive and curative healthcare services, higher mortality and morbidity rates, poor living and working conditions, a high risk of infectious and sexually transmitted diseases, cultural practices like open defecation, and psychological stress brought on by moving to a foreign sociocultural environment, migrant workers experience specific health issues. Additionally, because they don't have permanent jobs, employers can shirk their legal obligations to provide various benefits.

While employment can guarantee the family of the migrant worker's financial stability and, as a result, the lack of access to health care in the source state, lower and irregular wages, precarious and unregulated work, occupational hazards, infectious diseases, and social exclusion in the host state can all have a negative impact on the migrant worker's physical and mental health, as a result, these issues are rarely addressed in the nation's labour and health policies.

India has several major government-funded vertical health programmes, including ones that fight HIV/AIDS, TB, and malaria. Because the interventions associated with these programmes are typically lengthy and necessitate follow-up, these schemes frequently struggle greatly to maintain continuity of medical care and monitor health outcomes in migratory populations. The majority of government databases do not currently provide historical data on migrants³⁴. Even if this data exists, it is only relevant to the labour market. To improve migrant health outcomes, it is vital to intentionally channel this information into the health sector and develop "tracking mechanisms." The State should consider the diverse demands of the migrant worker while creating its programmes, especially not exclusively poverty, bad health, and psyche. This is supported by stories from all throughout India.

³⁴ Indianexpress, <https://indianexpress.com/article/india/covid-vaccination-migrant-workers-healthcare-crisis-7355221/>, (August 30, 2022).

Thus, migration and labour governance in this country are ongoing stories. One of those stories is the oversight of safe working conditions and health outreach to employees in informal sectors. The standing committee on labour was given the task of reviewing the labour code on occupational safety, health, and working conditions in 2019 by the Lok Sabha. A National (as well as State) Occupational Safety and Health Advisory Board was established to oversee the working conditions and safety requirements across sectors as part of the code, which was created by combining thirteen previous labour regulations. The requirements for contract labour and interstate migrant workers are covered explicitly in Chapter 11 (Part I) of the OSH, Code 2020. Surprisingly, this clause once more failed to make any specific mention of a provision for the health and safety of Intra migrant workers.

X. JUDICIAL REVIEW

The Honorable Courts have ruled time and time again that the right to health should be included within the ambit of Art. 21³⁵ and have given detailed guidelines for its effective implementation. “It is now established law that the right to health is a component of the right to life,” the court ruled in *State of Punjab v. M.S. Chawla*³⁶. The government is required by law to provide the necessary medical facilities.

“A healthy body is an essential foundation for all human pursuits”, the court ruled in *Vincent Panikurlangara v. Union of India*³⁷. Therefore, it is the responsibility of the State to secure the establishment and maintenance of an ambience favourable to good health in a welfare state.

The Courts have acknowledged the importance of the Right to Medical Care when health is lost. According to *Parmananda Katara v. Union of India*³⁸, The State has a responsibility to defend life under Article 21 of the Constitution. Those in charge of the community’s health have a duty to preserve life, regardless of whether the patient is a victim of a crime who is facing retribution under the laws of society or an innocent person. This is carried out to safeguard the innocent and punish the criminal.

³⁵ Constitution of India, Article 21.

³⁶ *State of Punjab v. M.S. Chawla*, AIR (1997) SC 1225.

³⁷ *Vincent Panikurlangara v. Union of India*, 1987 SCR (2) 468.

³⁸ *Parmananda Katara v. Union of India*, (1989) SCR (3) 997.

According to social rules, unintentional death is not a crime. Doctors should be compassionate, regardless of whether they work in a government hospital or not. They should endeavour to protect everyone's life, including migrant workers as well, by making the most of their abilities because that's what humanity calls for.

The court stated in *Paschim Banga Khet Mazdoor Samity v. State of West Bengal*³⁹ that since the provision of medical services is a joint responsibility of the Centre and the States, it is anticipated that the Union of India will provide the requisite backing to improve the medical services in the nation along these lines.

*Ram Lubhaya Bagga v. the State of Punjab*⁴⁰ found that "Health is the core of all activities of life, including that of an employee or other, whether physical, social, spiritual or any imaginable human activities". It is said that if this is denied, everything falls apart. In addition, guaranteeing one's life is one of the State's most important duties; this duty is imposed on the State by Article 21 and Article 47 of the Constitution and is not just a right guaranteed by Article 21.

The court ruled in the *Confederation of Ex-Servicemen Association v. Union of India*⁴¹ that a worker's right to health care both during and after their employment is a fundamental one. This Court asserts that it has the authority to order the State, its agencies, or even private companies to give effect to the right to life and to compensate impacted employees in the proper circumstances. People are compelled to migrate by human rights violations like extreme poverty. The Occupational Safety, Health, and Working Conditions Code of 2019 has been introduced by Parliament as part of efforts to "update" labour legislation. A comprehensive Code is intended to be created by combining thirteen labour legislation.

An excellent example is the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act of 1979. Activists fear that changes to the 1979 Act may weaken the protections provided for migrant workers. Current constitutional and

³⁹ *Paschim Banga Khet Mazdoor Samity v. State of West Bengal*, (1996) SCC (4) 37.

⁴⁰ *State of Punjab v. Ram Lubhaya Bagga*, (1998) 4 SCC 117.

⁴¹ *Confederation of Ex-servicemen Association v. Union of India*, AIR 2006 SC 2945.

statutory laws must be properly put into effect. These clauses shouldn't just be on paper.

XI. IMPACT OF COVID-19 LOCKDOWN & GOVERNMENTAL SCHEMES ON THE MIGRANT WORKERS

The entire nation of India has suffered dramatically as a consequence of the COVID-19 pandemic's nationwide lockdown. It has caused numerous difficulties for businesses and job seekers. However, migratory workers would be the most adversely impacted group among all⁴². Due to the unpredictable gap in public transportation during the shutdown, many migrant workers were required to travel vast distances to return to their hometowns. On their way home, some migrant workers and their children died as they could not bear it. Because timely government action was not taken, migrant workers became one of the most vulnerable groups. By fortifying themselves against a fatal virus, they made themselves vulnerable to other diseases like "violence," "joblessness," "depression," "hunger," and "lack of hospital treatment," among others. The quantity of wages they receive is determined by the economy's daily productivity. Even though some of them had jobs back home, their pay was considerably less than before the lockdown that had forced them to endure hardship. The workers' inability to pay rent due to the lockdown drove the landlords to impel them to leave the shelter in the host state. In light of their already poor incomes/wages, the pandemic robbed them of their savings.

A writ petition asking the Apex Court to issue instructions to the government to ensure the payment of wages to the migrant workers during the epidemic was filed in the case of *Harsh Mander and others v. UOI and others*⁴³. In its response, the court declined to get involved in policy debates and urged the petitioners to review the status report provided by the government. Later, on April 21, the petition was dismissed after Solicitor General Tushar Mehta filed a status report outlining the various steps being taken to tackle the obstacles faced by the migrant workers. He also

⁴² The Indian Express, <https://indianexpress.com/article/opinion/columns/migrant-and-informal-workers-must-have-social-security-7408494/>, (September 16, 2022).

⁴³ *Harsh Mander and anr. v. UOI and anr.*, 2020 SCC Online SC 376.

emphasised the creation of a helpline where complaints can be made so those harmed can receive immediate relief.

The epidemic provided the final piece needed to finish the puzzle, demonstrating the absence of institutional mechanisms. The truth is that there was no appropriate cooperation between the Center and the State governments before the pandemic. However, the government still took some steps to restore some hope by designing an institutional framework for the administration of interstate migrant labour.

The pandemic demonstrated the worst-case scenario that might occur with ISMWs. Following the lockdown announcement, the contract workers were immediately refused payment of their arrears and barely had enough money for meals. Since ration cards cannot be transferred, migrants with ration cards bearing the address of their home state were unable to purchase food from PDS stores in the host states during the nationwide 2020 lockdown. Without ration cards, many felt helpless and had to rely on food donations from the general population.

On June 9, 2020, the supreme court issued an order directing state and local governments to put plans in place for the safe return of migrant workers to their respective home states as well as the introduction of specific programmes that will aid the workers in getting food, employment, and healthcare services during the pandemic. Additionally, it also requested that the administration drop any charges against migrant workers for breaking lockdown rules. It should be emphasized that the Social Security Code, 2020 has mentioned the registration of gig workers, unorganised workers, and platform workers under Section 112⁴⁴. The supreme court also ordered to take up the registration of migrant workers under various portals to ensure the benefits and social security get delivered to them on time.

The government frequently conducts several flagship programmes, but the essential question is how many employees and the needy have genuinely benefited from them. This deserves equal consideration. The below-given observation is drawn from the NHRC Commissioned Report. The report took into consideration four cities i.e., Delhi,

⁴⁴ The Code on Social Security, 2020, Section 112, No. 36, Acts of Parliament, 2020 (India).

Maharashtra, Gujrat and Haryana to see the number of ISMWs who got benefitted during their hard times.

<i>Schemes</i>	<i>Delhi (%)</i>	<i>Maharashtr a (%)</i>	<i>Gujarat (%)</i>	<i>Haryana (%)</i>
<i>PM Ujjwala Scheme</i>	16.75	12.25	13.75	11.25
<i>Pradhan Mantri Gramin Awas Yojana</i>	2.0	1.5	1.0	1.75
<i>Integrated Child Development Services (ICDS)</i>	19.5	14.0	11.25	12.0
<i>Pradhan Mantri Matru Vandana Yojana (PMMVY)</i>	5.75	4.25	4.5	4.75
<i>National Social Assistance Programme (NSAP)</i>	3.75	4.25	4.0	4.5
<i>Sarva Shiksha Abhiyan (SSA)</i>	14.0	13.25	16.75	13.5
<i>Pradhan Mantri Jan Dhan Yojana</i>	27.25	23.0	19.75	22.25
<i>Pradhan Mantri Gareeb Kalyan Yojana (PMGKBY)</i>	28.0	27.75	24.75	26
<i>National Crèche Scheme of the Ministry of Women and Child Development</i>	-	-	-	-
<i>Ayushman Bharat-Pradhan Mantri Jan Arogya Yojana (AB-PMJAY)</i>		3	3.25	3.5
<i>Building and Other Construction Workers' (BOCW) Act</i>	8	9.0	6.75	7.5

<i>Foodgrains under the Public Distribution System (PDS)</i>	16.75	13.75	13.5	10.75
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Therefore, it is clear that only a small minority of ISMWs benefited from government programmes; this may be due to ignorance, a lack of social networks, communication gaps, organisational challenges, a lack of education, etc. They are also highly mobile and do not stay in one place for an extended period of time, which is why they do not take advantage of the benefits. Finally, policy failure is not simply a result of legislative shortcomings, but also of shortcomings in policy implementation at all levels.

XII. NEW DEVELOPMENTS AND RECOMMENDATIONS

A. New developments brought for the migrant workers through “Occupational Safety, Health and Working Conditions Code, 2020”

- 1) Section 2(e)⁴⁵ of “The Inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979” only covered those workers who were hired through contractors, so the definition of inter-state migrant workers was missing from that law until the Rajya Sabha passed the Occupational Safety, Health and Working Conditions Code, 2020 on September 23, 2020. The revised Code thus provided a more comprehensive definition.
- 2) The code also established particular advantageous measures for them, such as PDS, which are now available to workers in both their home state and the state where they are employed.
- 3) The OSH Code, 2020 has now eliminated the role of “contractor” which was earlier mentioned in the ISMA Act, allowing migrant workers to communicate directly with their employers without the need for an intermediary and thus saving money on their wages, which was previously

⁴⁵ The Inter-State Migrant Workmen (Regulation of employment and condition of service) Act, 1979, Section 2 (e), No. 30, Acts of Parliament, 1979 (India).

impossible because the intermediary used to charge a commission from both sides, thereby lowering the worker's wage.

- 4) Workers willing to work overtime after the stipulated hours will be entitled to overtime pay at twice the wage rate.
- 5) However, an obligation on employers "to supply and maintain acceptable residential accommodation" has been withdrawn by the labour ministry during their employment with migrants. A displacement allowance that the contractors were meant to give the migrant employees has also been eliminated under the OSH regulation.

The bill, however, adds an annual journey allowance similar to a travel allowance, and the "employer shall pay, to each interstate migrant worker employed in his establishment, in a year a lump sum amount of fare for to and from a journey to his native place from the place of employment, in the manner taking into account the minimum service for entitlement, periodicity and class of travel, and such other matters as may be prescribed by the appropriate government."

- 6) The migrant workers in the Construction and Building sectors can benefit from the construction cess fund in the state where they are employed after the enactment of the OSH 2020 Code.
- 7) The 2020 Code⁴⁶ increased the wage threshold limit was also increased to 18,000/- rupees p/m from 15,000/-, which was as per the 2019 Code, now including workers in supervisory roles who are now receiving the revised number of payments under the definition of "worker".
- 8) The Code on Social Security, 2020⁴⁷ added a provision requiring the Central and State governments to keep an online site where workers can register themselves using their Aadhar or self-declaration. This step is vital given recent reports that the Central Government could not provide information on the number of deaths of migrant workers during the COVID-19 shutdown.

⁴⁶ The Occupational Safety, Health and Working Conditions Code, 2020, Section 2 (zf), No. 36, Acts of Parliament, 2020 (India).

⁴⁷ The Code on Social Security, 2020, Section 113, No.36, Acts of Parliament, 2020(India).

- 9) There was no mention of the minimum number of hours a person was required to work in the 2019 Bill, but the 2020 Code now includes a provision requiring a maximum of 8 hours.
- 10) The Code on Social Security, 2020, included the availability of a crèche facility for the establishment having at least fifty women workers.

B. NEED FOR RATIONALIZING THE MIGRANT WORKMEN ACT

A statute passed by the Indian Parliament in 1979 called the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act was intended to regulate how inter-state employees were administered under Indian labour law. The Act was passed to protect Indian workers whose administrative needs are directed outside their home states. Whenever there is a skills gap among the readily available local experts, the demonstration makes plans to use more skilled labourers available outside the state. Due to the lockdown, vagrant work has been one of the factors with the most glaringly harmful effects. Their efforts to leave the cities before the lockdown and the extraordinary efforts made to get back to their residents suggest that they are not flexible enough to stay in cities when there is no business to be done there⁴⁸.

All States and Union Territories are required by the Supreme Court⁴⁹ to register all establishments, licence all contractors, and guarantee that the statutory requirement⁵⁰ placed on the contractors to provide information about migrant labour is adequately adhered to.

Despite widespread awareness of India's uniform savings net, they become lost. The administration's response has revealed a significant gap between the admirable objectives embodied in current legislation and its implementation. State governments were caught off guard by between-state vagrants frantically trying to get back during the fast aftermath of the lockdown. Many worried about being seriously ill and away

⁴⁸ Mogha, N, Inter-State Migrant Workers Act: A Critical Analysis, Legal Service India, (September 1, 2022, 9 P.M.), <https://www.legalserviceindia.com/legal/article-2184-inter-state-migrant-workers-act-a-critical-analysis.html>

⁴⁹ Re:Problems and miseries of Migrant Labours, 2021 SCC Online SC 410.

⁵⁰ Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act.1979.

from their families because they had lost their jobs, would no longer be able to afford the rent or would have to move because of job loss.

It was noted in the case of *Shashank S. Mangal v. Govt. (NCT of Delhi)*⁵¹ that data collection should be vertically linked, so that information on migrant workers from the Central Government and the States is gathered, cross-checked, stored, and provided immediately and without delay.

If the law had been fully and legally implemented, it would have implied that state governments had absolute knowledge of how migrant labourers enter their states via contract employment. Even though this would currently disregard vagrants who travel between states alone, a sizable portion would be afterwards enrolled due to the Act's requirements. According to all accounts, the severe uniformity requirements outlined in the statute are the primary cause of this. In addition to requiring equal pay for all state workers, it also necessitates additional social protections that would raise the cost of doing business relative to intra-state employees.

Since the Act hasn't been put into practice much, it nevertheless exists as a statute that might allow some government investigators to snoop about while failing to achieve its primary goal. Another outcome of ineffective use is the absence of government preparation and the ensuing disappointment in successfully averting genuine issues for defenceless gatherings. The lockdown's outcomes are currently regrettable for migrant labour⁵². One of the lessons to be learned from this event is to avoid letting naive requirements stand in the way of the compelling assurance of the very groups for which they were put in place.

C. RECOMMENDATIONS

- 1) The issue of language barriers should be prioritised by the government because most migrant workers lack education and are, therefore, unable to understand government programmes. To address this issue, a helpline 24*7 should be established, and individuals fluent in vernacular languages

⁵¹ *Shashank S. Mangal v. Govt. (NCT of Delhi)*, 2020 SCC Online Del 621.

⁵² Live Law, <https://www.livelaw.in/top-stories/supreme-court-directs-statesuts-to-strictly-implement-inter-state-migrant-workmen-act-1979-176499>, (September 5, 2022, 11 A.M).

should be hired and given special training to assist migrant workers with their questions.

- 2) The need for an Interstate Migration Council is urgent because it can contribute to the welfare, safety, and security of migrant workers by assisting in resolving interstate migration-related problems. India needs a system for interstate coordination, and the Interstate Migration Council can strive to make sure the welfare and safety of migrant workers.
- 3) Government should establish high-tech systems by giving electronic ration cards to every migrant worker. As a result, high-tech systems are what the moment demands because not all the states are covered by this e-ration card facility.
- 4) Government should launch specific awareness programs that will make the workers aware of the social schemes along with the procedural requirement of availing them.
- 5) Government should implement on-site health camps with reasonable medical fees and assist in addressing the employees' health issues each month in their states of residence or migration.
- 6) Proper safety measures should be implemented on the factory premises for the worker's safety.
- 7) Since most migrant workers lack education and skills, this reduces their ability to handle a job that demands them. Thus, the government should start various skill-training programmes for those who don't have it to help them support themselves.
- 8) The migrant workers should also receive certification for the skills they have acquired, as this will enable them to explore better chances in their host or state countries. During the lockdown, the government took the initiative to start the "Garib Kalyan Rozgar Abhiyan" programme, which gave interstate migrant workers three days of training and trained nearly 3 lakh workers after they returned due to job loss during the pandemic. Since there is currently a programme in place, the government should explore

modernising or expanding it because a programme of this nature shouldn't be limited to hardship.

- 9) Because their right to vote counts in the host states as well, ISMWs should be allowed to cast a remote ballot for candidates in their home states. This will allow them to be heard and seen.
- 10) Even though 88% of workers move within states in search of employment and are among those who experience the same discrimination, humiliation, and abuses, the OSH Code, 2020 only addresses interstate migrants under Chapter XI and does not include the concept of intra-migrant workers within its purview. As a result, the law should include their concerns as well.

XIII. CONCLUSIONS

The most vulnerable group on earth is migrant workers. Their departure is forced; it was not a decision. Food availability is not the only remedy. Giving migrant workers free food does not relieve the government of its greater responsibilities or lessen the suffering of these employees. The Indian government has consistently turned a blind eye to the political debate over labour-related concerns. The Covid-19 outbreak has exposed the government's lack of commitment to safeguarding the nation's most vulnerable citizens.

India must adhere to the minimum global labour standards outlined in the International Labor Conventions. The human rights catastrophe that India is experiencing during this pandemic has received attention from the UN. It had demanded domestic unity. It's time for India to learn how European labour regulations are implemented. Inclusion is a significant tenet of their policy. Social inclusion refers to the coherence of a community in which each individual is embraced as an integral part. To help migrants assimilate into the workforce, they help programmes. The migrant population in the EU is divided into groups like highly skilled workers, transfers between corporations, international students, seasonal labourers, etc.

According to the health insurance programme, Awaaz, launched by the Keralan government in 2017, it is necessary to mandate health insurance coverage for migrant workers nationwide. The health budget must be increased to accommodate unanticipated pandemic crises like this and establish comprehensive healthcare services that serve the underprivileged areas of the nation, giving them priority.

By eliminating onerous compliance procedures and guaranteeing universal labour standards, outdated legislation like the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, can be more effective. The government should support the establishment of a different ministry to address concerns about the population of migrant workers, ensuring compliance through application under the scope of governmental entities. The government should encourage and support non-governmental organisations (NGOs) that actively fight to preserve the legal rights of migrant workers, as well as to create a movement to advocate for these workers' rights and to lobby against their exploitation and abuse.

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