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Assistant professor of Law

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Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-I, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been

awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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SOCIO-LEGAL ASPECTS OF MIGRANT WORKERS - A STUDY FROM INDIAN PERSPECTIVE

AUTHORED BY - MAHANTESH G S

ABSTRACT

The concerns of migrant workers who are observed in both rural and urban parts of India need to be understood and addressed by Indian society, the national government, and various State governments. Most migrant workers are unskilled and operate in unorganised industries. West Bengal, Assam, Bihar, Uttar Pradesh, Odisha, Jharkhand, and Chhattisgarh are the major states that send migrant workers over state lines. Some migrant workers fall under the category of child labourers, while others pursue education while working part-time. Interstate migrant labourers in India deal with a variety of issues. These include failure to provide benefits under government programmes, poor access to available programmes and services, inadequate and inappropriate workplace safety measures, subpar housing conditions, excessive working hours, low wages compared to local employees, restricted access to health care services, social exclusion, poor social interaction, and lack of community integration.

The existing legal and social security provisions are not well known. Access to social security, welfare, and health services is not available to migrant workers. The Central Government and home State's failure to supply entitlements and the non-portability of benefits are what cause issues for migratory employees.

The object of the current research is to outline the difficulties encountered by migrant labourers in India. It also tries to define the subject of migrant workers' protection under applicable national and international legislation. Finally, this analysis concludes that legislation must be passed as quickly as feasible to address the current problems.

Keywords: Migrant Workers, India, Human Rights, Inter-State, Social Justice

* Assistant Professor of Law, Alliance University, Bangalore, Karnataka

INTRODUCTION

“No work is insignificant. All labour that uplifts humanity has dignity and importance and should be undertaken with painstaking excellence.” — Martin Luther King Jr.

The human being has become the best creature created by God. God has given him wisdom and strength, but still, human life is not smooth. He has to constantly struggle to survive and keep his family members with him. As a result, he has to move from one place to another for his livelihood. For work, he has to go out of his area or from his state or country. Moving from one place to another is not a new phenomenon. This has been happening for a long time. For rapid industrial development, a large number of workers left their rural areas and moved to urban areas to earn a living.

Our Constitution of India has also recognized this dynamism of the people by assuring freedom of movement freely throughout the territory of India [Article 19 (1) (d) of the Constitution] subject to reasonable restriction.¹ In addition to the Constitution of India, numerous laws in our country protect the interest of migrant workers. Taking into consideration the safety and exploitation of interstate migrant workers, our Indian parliament enacted ‘The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979’,² to regulate the employment of inter-state migrant workmen and to provide for their conditions of service and others related matters.

Migration in the Census of India is of two types – Migration by Birthplace and Migration by place of last residence. When a person is enumerated in Census at a place, i.e., village or town, different from her/his place of birth, she/he would be considered a migrant by place of birth. A person would be considered a migrant by place of last residence if she/he had last resided at a place other than her/his place of enumeration.³

According to Census 2011, there were 454 million migrants in India. This had risen by 139 million

* Assistant Professor of Law, Alliance University, Bangalore, Karnataka.

¹ Article 19(1)(d) provides for the right to move freely throughout the territory of India. This means the right to locomotion, i.e., the right to move as per one's own choice. This right includes the right to use roads and highways.

² Act No. 30 of 1979, The Inter-State Migrant Workmen Act, 1979 was an Act of the Parliament of India enacted to regulate the condition of service of inter-state labourers in Indian labour law. The Act's purpose was to protect workers whose services are requisitioned outside their native states in India.

³Migration, Drop-in-Article on Census - No.8, (Accessed June 4, 2023, 9.36 am) https://censusindia.gov.in/nada/index.php/catalog/40447/download/44081/DROP_IN_ARTICLE-08.pdf.

from 315 million in 2001 Census 2011 and 220 million in 1991, a doubling from 1991-2011. Marriage and other family-related migration, which was 72.2% of all migration from 1991 to 2001, now is 74.7% of all migration from 2001 to 2011, but the share of marriage is diminishing while the share of other family-related migration is growing. Further, 40% of all internal migrants (309.4 million) across all durations who constituted rural to rural marriage migrants (123.9 million of which 122.3 million were female), only 4.8% were interstate marriage migrants (6.0 million), i.e., 1.9% of all migrants. By contrast, of the 14.6 million rural to urban migrants for work and business (4.7% of all migrants), 43% (2.0% of all migrants) were inter-state migrants. The corresponding share of such inter-state urban-to-urban work migrants (2.9 million) is 41% of all urban-to-urban migrants for work (7.1 million). So, inter-state migration is a significant part of migration for work and business.⁴

II. DEFINITION - MIGRANT WORKERS AND THEIR FAMILIES

The most comprehensive definition of a migrant worker is provided in the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (Adopted by General Assembly resolution 45/158 of 18 December 1990)

According to Article 2(1) of the Convention on Migrant Workers, the term “migrant worker” refers to “a person who is to be engaged, is engaged, or has been engaged in a remunerated activity in a State in which he or she is not a national”.

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Article 2 also distinguishes between particular categories of migrants. These include “frontier worker”, “seasonal worker”, “project-tied worker”, “itinerant worker”, “seafarer” and “self-employed worker”; categories which have been excluded from other international standards developed in the past, including ILO conventions specific to the rights of migrant workers.

⁴ REPORT OF THE WORKING GROUP ON MIGRATION January 2017, (Accessed June 4, 2023, 10.16 a.m.) <http://mohua.gov.in/upload/uploadfiles/files/1566.pdf>

According to Article 2(2)(a), the term “frontier worker”⁵ refers to a migrant worker who retains his or her habitual residence in a neighbouring State to which he or she normally returns every day or at least once a week.

According to Article 2(2)(b), the term “seasonal worker”⁶ refers to a migrant worker whose work by its character is dependent on seasonal conditions and is performed only during part of the year. Part V of the Convention sets out the rights that apply to these particular categories of migrant workers.

In particular, the definition of “self-employed worker” “recognizes the large number of migrant workers who operate a small family business by themselves or with other family members.” These definitions apply across all regions of the world.

In addition, the Convention recognizes migrant workers as social entities and extends recognition of rights to members of their families. Article 4 provides the following definition:

In addition, the Convention recognizes migrant workers as social entities and extends recognition of rights to members of their families. Article 4 provides the following definition: The term “members of the family” refers to persons married to migrant workers or having with them a relationship that, according to applicable law, produces effects equivalent to marriage, as well as their dependent children and other dependent persons who are recognized as members of the family by applicable legislation or applicable bilateral or multilateral agreements between the States concerned.⁷

III. CAUSES OF MIGRATION

Although the reasons influencing the supply and demand of migrant labour can change, the majority of migrant labourers travel to their places of employment due to bad economic and social conditions in their home regions.

⁵ In the EU context, a worker who is employed in the frontier zone of an EU Member State but who returns each day or at least once a week to the frontier zone of a neighbouring country in which they reside and of which they are nationals.

⁶ Seasonal employment is temporary work to meet an organization's temporary needs during certain times of the year. This might include Businesses that are only open during part of each year, such as ski resorts.

⁷ Promoting and Protecting the Rights of Migrant Workers, Asia Pacific Forum, Chapter 1: The International Legal Framework on the Rights of migrant workers and their family members, P.3, (Accessed June 4, 2023). https://apf-prod.s3.amazonaws.com/media/resource_file/Migrant_Workers_Rights_Manual_for_NHRIs_Yy97XUD.pdf?AWSAccessKeyId=AKIA57J6V5571SASX34R&Signature=kOgdGAdZ3kSL086k75e%2Bd6xFQyo%3D&Expires=1686137366.

If we go a bit further and do some analysis, we will discover that there are numerous causes for labour migration. These elements can be broken down into four categories, namely environmental, economic, cultural, and socio-political. The reasons within that could potentially include "push" or "pull" aspects.

Push Factors

The forces that push people to move willingly are referred to as pushing factors, and they frequently do so because doing nothing puts them in danger.

We can use poverty, a lack of employment prospects, unemployment, underdevelopment, poor economic conditions, a lack of opportunities, natural disasters, a lack of irrigated land, etc. as an example of a push force.

Pull Factors

By pulling factor we mean all those factors in the destination country that attract the individual or group to leave their home. Those factors are known as place utility, which is the desirability of a place that attracts people.

Some examples of pull factors are employment and higher education opportunities, higher wages, facilities, better working conditions, etc.

IV. ENSURING THE HUMAN RIGHTS OF MIGRANT WORKERS

Human rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. We are all equally entitled to our human rights without discrimination. These rights are all interrelated, interdependent, and indivisible.

Universal human rights are often expressed and guaranteed by law, in the forms of treaties, customary international law, general principles, and other sources of international law. International human rights law lays down obligations of Governments to act in certain ways or to refrain from certain acts, to promote and protect human rights and fundamental freedoms of

individuals or groups.⁸

As non-nationals, migrant workers therefore generally have the same human rights as citizens. Under international human rights law, migrant workers are entitled to some form of special protection. The only UN document directly relevant to migrant workers is the "International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families". According to Article 2(1) of the convention, a "migrant worker" is a person who is engaged in, has participated in, or is about to engage in a paid activity in a State in which they are not citizens. The rights that are available to migrant workers and their families are comparable to those found in the Declaration on the Human Rights of Persons who are not Nationals of the Country in which they reside. Other UN provisions may be crucial for defending migrant workers' human rights against exploitation and discrimination based on their non-national status. The following international conventions may make mention of these unique types of rights. (a) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990.

(b) Migration for Employment Convention (Revised), 1949 (No.97),

(c) The Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143).

(d) The Universal Declaration of Human Rights, 1948.

(e) International Covenant on Civil and Political Rights, 1966

(f) The Convention on the Elimination of All Forms of Discrimination Against Women.

(g) The Convention on the Elimination of All Forms of Racial Discrimination.

(h) The ILO Forced Labour Convention, 1930

(i) The Convention on the Rights of the Child

(j) Freedom of Association and Protection of the Right to Organise Convention, 1948 (No.87)

(k) Equal Remuneration Convention, 1951 (No.100)

(l) Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (m) Minimum Age Convention, 1973 (No. 138)

⁸ United Nations Human Rights, visited on June 4, 2023, <https://www.ohchr.org/en/what-are-human-rights>

V. ILO CONVENTIONS AND MIGRANT WORKERS

The ILO has produced many conventions that specify and safeguard the labour rights of migratory workers in addition to the international human rights treaties. The ILO has expressly adopted two important conventions on the rights of migrant workers:

1. Migration for Employment Convention, 1949 (C-97)
2. Migrant Workers (Supplementary Provisions) Convention, 1975 (C-143)

These conventions are supplemented by two (non-binding) ILO recommendations that provide further guidance on how the rights of migrant workers can be protected in practice:

1. Migration for Employment Recommendation (Revised), 1949 (R-86)
2. Migrant Workers Recommendation, 1975 (R-151).

The Migration for Employment Convention deals with international migration for employment and focuses on the recruitment of migrants and conditions of work in the host country. Its major provisions include non-discrimination in wages, union activities and benefits, and social security (Article 6). The Annexes deal with private and public recruitment, stressing that there should be a no-fee public option, the need to provide contracts for prospective migrant workers, and that “any person who promotes clandestine or illegal immigration shall be subject to appropriate penalties” (Annex II, Article 13).

The Migrant Workers (Supplementary Provisions) Convention is the first treaty to deal directly with the rights of migrants in irregular situations. It addresses in detail issues about “migrations in abusive conditions” and the “promotion of equality of opportunity and treatment of migrant workers”. Article 2 requires each Member State to “seek to determine whether there are illegally employed migrant workers on its territory” and Article 6 calls for penalties against traffickers and the illegal employment of migrant workers. Article 9 sets out requirements for “equality of treatment” in wages, social security, and other benefits arising from the past employment of undocumented migrant workers. Several other ILO conventions also have great relevance for migrant workers. For example, the Domestic Workers Convention, 2011 (C-189) is the most recent ILO convention and is particularly relevant as many domestic workers are migrant women.⁹

⁹ Promoting and Protecting the Rights of Migrant Workers, Chapter 1: ‘The international legal framework on the rights of migrant workers, P.8, visited on June 4, 2023, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-rights-all-migrant->

of 1923 was the only major legislation on the subject enacted before independence. When the Constitution of independent India was adopted, Social Security was specifically included in the Constitution. Several Directive Principles of State Policy (Articles 38 (i), 39 (e), 41, 42, and 43) relating to Social Security were incorporated in the Constitution. Legislation on different aspects of Social Security was also done, along with the introduction of various schemes. Successive five-year plans have emphasized the need for Social Security with wider coverage and better benefits.¹² The Constitution of India from, Articles 14-16, 19(1)(c), 23-24, 38, and 41- 43A directly concern labour rights.

Everyone should be treated equally under the law, according to Articles 14 and 15, respectively. Article 16 also grants the right to "equality of opportunity" for employment or appointment by the state.

Everyone has the special right "to form associations or unions" according to Article 19(1)(c). Underage child labour in mines, factories, or "any other hazardous employment" is prohibited by Articles 24 and 23, respectively. Article 23 outlaws all forms of trafficking and forced labour.

According to Article 38(1), the state should generally "strive to promote the welfare of the people" through the establishment of a "social order in which justice, social, economic, and political, shall inform all the institutions of national life." According to article 38(2), the state is required to "minimise the inequalities in income" and to consider all other statuses.

Equal compensation for equal work for both men and women is proclaimed a Directive Principle of State Policy in Article 39(d) 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.

The National Rural Employment Guarantee Act of 2005 aims to implement the "right to work" established by Article 41. The state must "make provision for securing just and human conditions of work and for maternity relief," according to Article 42.

Article 43 says workers should have the right to a living wage and "conditions of work ensuring

¹² Social Security, Report of the National Commission on Rural Labour, Volume I, 1991, p.228 (June 4, 2023, 10.15 a.m.).

a decent standard of life". Article 43A, inserted by the Forty-second Amendment of the Constitution of India in 1976, creates a constitutional right to codetermination by requiring the state to legislate to "secure the participation of workers in the management of undertakings".¹³

VII. THE INTER-STATE MIGRANT WORKMEN (REGULATION OF EMPLOYMENT AND CONDITION OF EMPLOYMENT AND CONDITIONS OF SERVICE) ACT, 1979

The technique of hiring interstate migrant labourers, also known as dadan labour, is popular in Orissa and several other states. In Orissa, contractors or agents known as Sardars or Khatadars hire dadan labour from various sections of the state for work on significant construction projects that are carried out outside of the state. While Sardars or Khatadars agree to settle their piece-rate wages each month when they are hired, this commitment is typically never followed. Once the worker is in the contractor's grasp, he just demands payment for the cost of the train journey before transporting him to a remote location.

No working hours are fixed for these workers, and they have to work on all the days in a week under extremely bad working conditions. The provisions of the various labour laws are not being observed in their case and they are subjected to various malpractices. The question of protection and welfare of Dadan Labour was considered by the Twenty-eighth Session of the Labour Ministers' Conference held on 26th October 1976 in New Delhi. It was recommended to set up a Compact Committee to go into the whole question and to suggest measures for eliminating the abuses prevalent in the system. Accordingly, in February 1977, the Compact Committee was constituted and it recommended, inter alia, that separate Central legislation may be enacted to regulate the employment of inter-State migrant workmen as it was felt that the provisions of the Contract Labour (Regulation and Abolition) Act, 1970, even after necessary amendments, would not adequately take care of the variety of malpractices indulged in by the contractors, Sardars or Khatadars. The recommendations of the Compact Committee were examined in consultation with the State Government and the Ministries in the Government of India. Accordingly, the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Bill, 1979 was

¹³ Negi, Chitranjali, Human Rights Violations of Migrants Workers in India During COVID-19 Pandemic (June 17, 2020). Available at SSRN: <https://ssrn.com/abstract=3629773> or <http://dx.doi.org/10.2139/ssrn.3629773>.

Salient features of the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Services) Act, 1979 are as –

1. This Act extends to the whole of India. 2. This Act applies –
 - (a) to every establishment in which five or more inter-State migrant workmen (whether or not in addition to other workmen) are employed or who were employed on any day of the preceding twelve months,
 - (b) to every contractor who employs or who employed five or more inter-State migrant workmen (whether or not in addition to other workmen) on any day of the preceding twelve months.
3. All migrant workers who are employed individually outside their State are not covered under this Act rather only those who are employed through contractors will be treated as inter-State migrant workers.
4. Every contractor is required to obtain a license from a licensing officer, appointed by the State Government, for recruiting any person in a State to employ him in any establishment in another State.
5. Without being registered under the Act, a principal employer can not employ any inter-State worker.
6. The contractor is under a duty to issue to every inter-State migrant worker, a passbook affixed with a passport-size photograph of the workman and indicate information about the worker, including payment, advances paid, etc. in Hindi and English and where the language of the worker is not Hindi or English, also in the language of the workman.
7. An inter-State migrant workman shall in no case be paid less than the wages fixed under the Minimum Wages Act, 1948.
8. A journey allowance of a sum not less than the fare from the place of residence of the inter-

¹⁴ The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, (Accessed June 4, 2023) <https://clc.gov.in/clc/acts-rules/inter-state-migrant-workmen#>.

State migrant worker in his State to 'the place of work in the other State shall be payable by the contractor to the worker both for the outward and return journeys, and he/she will be entitled to payment of wages during the period of such journeys as if he were on duty.'¹⁵

Besides, other Acts are also applicable to migrant workers:

1. The Employees Compensation Act, 1923
2. The Minimum Wages Act, 1948
3. The Equal Remuneration Act, 1976
4. The Contract Labour (Regulation and Abolition) Act, 1970
5. The Child Labour (Prohibition and Regulation) Act, 1986
6. The Payment of Gratuity Act, 1972
7. The Unorganised Workers' Social Security Act, 2008
8. The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.

VIII. CONCLUDING REMARKS

“The saving of labour of the individual should be the object and honest humanitarian considerations, and not greed, the motive”. – Mahatma Gandhi

Some challenges faced by the migrant workers in India are struggling with low wages, physical, sexual & mental exploitation with safety and security.

The Government of India should ratify all the relevant international covenants that respect the dignity of labour, especially important ILO Conventions No.87.the freedom of association and protection of the right to organize the convention, the ILO Convention 98, the right to organize, and the 16 collective bargaining convention.¹⁶

Prime Minister Narendra Modi on 20th June 2020 launched an employment scheme with an outlay

¹⁵ Pandey, P.K. and Mishra, Prashant, Protection of Inter-State Migrant Workers in India - An Analysis (April 2, 2012). The Legal Analyst, Vol. 1, No. 2, 2011, pp. 34-43, Available at SSRN: <https://ssrn.com/abstract=2033466>.

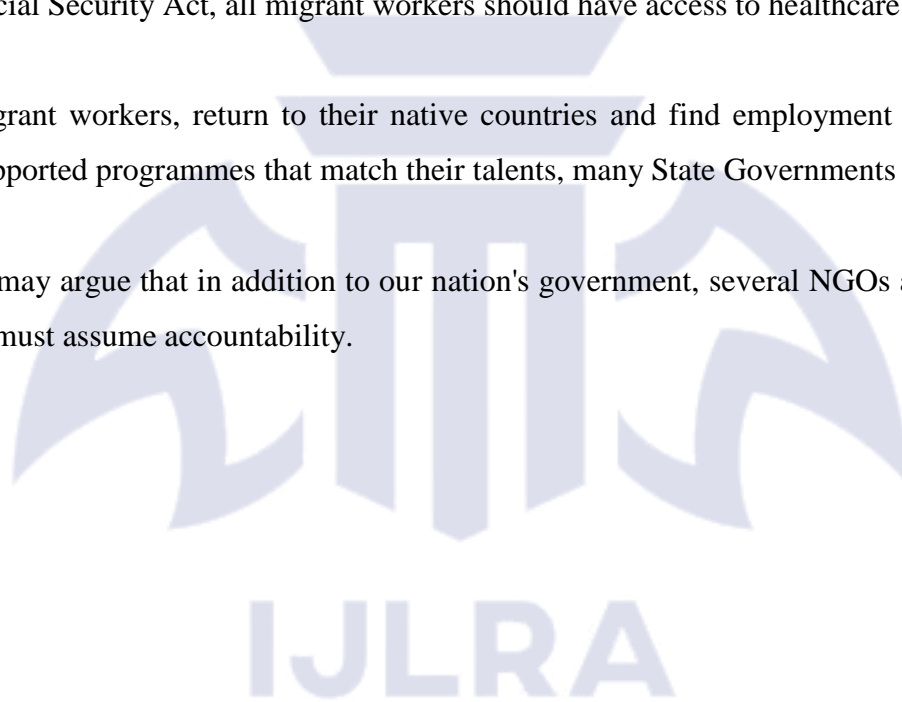
¹⁶ Negi, Chitranjali, Human Rights Violations of Migrants Workers in India During COVID-19 Pandemic (June 17, 2020). Available at SSRN: <https://ssrn.com/abstract=3629773> or <http://dx.doi.org/10.2139/ssrn.3629773>.

of Rs 50,000 crore for migrant workers who returned to their home states during the coronavirus-induced lockdown. Launching the 'Garib Kalyan Rozgar Abhiyaan', Modi said there are some people who might not appreciate the efforts of villagers in the fight against coronavirus, but he applauds them for their efforts. The way villages have fought coronavirus has taught a big lesson to the cities, he added.¹⁷

Every worker must follow the National Food Security Act of 2013, which mandates food security practises. State governments should be encouraged by the Ministry of Human Resource Development to incorporate migrant children in their yearly Sarva Shiksha Abhiyan work plans. Under the Rashtriya Swastha Bima Yojana, Employees' State Insurance, and the Unorganised Workers Social Security Act, all migrant workers should have access to healthcare services.

To help migrant workers, return to their native countries and find employment under various centrally supported programmes that match their talents, many State Governments have acted.

Finally, we may argue that in addition to our nation's government, several NGOs and individual individuals must assume accountability.



¹⁷ The Economic Times, E-Paper on Jun 20, 2020 (June 4, 2023, 11.02 a.m.) <https://economictimes.indiatimes.com/news/economy/policy/pm-launches-employment-scheme-for-migrant-workers/articleshow/76479291.cms>.