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# **FROM INVISIBLE TO INCLUDED? MIGRANT CONSTRUCTION WORKERS AND THE PROMISE OF THE CODE ON SOCIAL SECURITY, 2020**

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## **ABSTRACT:**

Migrant construction workers are considered as an important segment of the overall India's work force, yet they are often overlooked as part of society because they migrate primarily from one state to another and then back again, or they work in informal settings through sub-contracting arrangements made by labour contractors, as well as other unorganised methods.<sup>1</sup> Despite the nature of their work, these migrant workers historically had no means of access to any kind of labour or social protection system in India.<sup>2</sup> This research paper will discuss how the legal structure that existed prior to the year 2020, namely, the Building and Other Construction Workers (BOCW) Act, 1996, the Inter-State Migrant Workers (ISMW) Act, 1979, etc. and how it changed after the enactment of the new consolidated framework of the Code on Social Security, 2020.<sup>3</sup>

The entitlement of migrants to social security is grounded in Article 21 of the Constitution and the Directive Principles of the State Policy.<sup>4</sup> The study identifies the welfare responsibilities of the State through these statutory provisions.<sup>5</sup> The Supreme Court of India played an important role in protecting migrant workers and their rights during the COVID-19 pandemic in *In Re: problems and Miseries of Migrant Labourers (2020-21)*.

The studies outlined in this paper indicate that several persistent barriers remain for migrant workers, particularly for women. These barriers include lack of access to digital registration,

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<sup>1</sup> Ministry of Labour & Employment, Annual Report 2022-23, Government of India (discussing inter-State and circular migration in the construction sector); Jan Breman, *Footloose Labour: Working in India's Informal Economy* (Cambridge Univ. Press 1996)

<sup>2</sup> Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, No. 27 of 1996, India; Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, No. 30 of 1979, India

<sup>3</sup> Code on Social Security, No. 36 of 2020, India

<sup>4</sup> INDIA CONST. art. 21; INDIA CONST. arts. 38, 39, 41, 42 & 43

<sup>5</sup> *In re Problems & Miseries of Migrant Labourers*, (2020) 13 SCC 518; *In re Problems & Miseries of Migrant Labourers*, (2021) 4 SCC 85

lack of compliance by an employer, uncertainty regarding funding, and a lack of effective communication between States.<sup>6</sup> Although the code introduces some positive changes with respect to the inclusion of migrant workers in the social security system, the Code has not yet fulfilled its promise of providing access to social security to migrant workers.<sup>7</sup>

**KEYWORDS:** Migrant Construction Workers, Code on Social Security 2020, Inclusion in Social Security, Unorganised Workers, Construction Industry, Labour Law Reform.

### INTRODUCTION:

The construction sector plays a vital role in nation's economic growth, contributing largely toward infrastructure growth as well as employment production.<sup>8</sup> This sector remains the second-largest after agriculture and depends heavily on inter-state migrant workers. Such labourers forced through agrarian distress and lack of livelihood opportunities within their native regions such as Bihar, Uttar Pradesh and Odisha, migrate toward urban centres for pursuit of employment.<sup>9</sup> Despite their essential input toward national development, migrant construction workers remain within the highly vulnerable and marginalised sections of the working population.

The employment of migrant construction workers is defined through high levels of irregularity, hazardous working circumstances (often classified as "3D jobs", Dirty, Dangerous, and difficult), and complicated subcontract-based systems which undermine employer responsibility.<sup>10</sup> Even though physically apparent at construction sites, migrant workers often remain legally invisible under employment regulatory structures. For several years, the statutory framework regulating their well-being, mainly the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 and the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979

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<sup>6</sup> NITI Aayog, Social Protection for Migrant Workers (2021); International Labour Organization, Extending Social Security to Migrant Workers (2017)

<sup>7</sup> Code on Social Security, 2020, §§ 6, 109, 113, 141 (India)

<sup>8</sup> British Safety Council India, A Risky Existence: Tackling Dangers to the Children of Migrant Construction Workers (2025) (construction sector growth & migrant precarity), <https://www.britsafe.in/safety-management-news/2025/a-risky-existence-tackling-dangers-to-the-children-of-migrant-construction-workers>

<sup>9</sup> Legal Service India, Issues Faced by Migrant Workers in India (analysis of contractor evasion, lack of enforcement & ISMW Act gaps), <https://www.legalserviceindia.com/legal/article-14670-issues-faced-by-migrant-workers-in-india.html>

<sup>10</sup> Forum IAS, Challenges Faced by Migrant Workers and Ways to Improve Welfare Access (documentation & welfare accessibility barriers for migrant workers), <https://forumias.com/blog/challenges-faced-by-migrant-workers-and-ways-to-improve-welfare-access/>

experienced from severe enforcement failures. One of the most significant constraints of the pre-2020 structure was the absence of transferability of welfare benefits because entitlements were linked to state-based registration mechanisms, practically excluding migrant workers during inter-state migration.<sup>11</sup>

The inadequacies relating to the present regime were clearly disclosed during the COVID-19 crisis, when lockdown measures caused into widespread uprooting of migrant workers.<sup>12</sup> This resulting welfare-oriented crisis emphasized the lack of a Functional social security framework for the migrant workers and reinforced the systematic disregard ingrained within the existing labour welfare systems.<sup>13</sup> Under these circumstances, the enactment of the code on social security, 2020 signified a legislative initiative in order to consolidate employment statutes as well as expand social security applicability towards unorganised and migrant labourers.<sup>14</sup>

This study examines the code on social security, 2020 through the defined perspective of migratory construction workers. It aims to evaluate whether the legislation's focus on comprehensive registration and labour-focused social protection mechanisms results into substantive social security concerning migrant labour, or whether technological impediments and institutional apathy remain to cause these protections ineffective.<sup>15</sup> By examining the transition from the pre-2020 statutory framework to the current framework, the research evaluates the scope to which the new social security framework addresses the enduring insecurities of migrant construction workers.<sup>16</sup>

## CONCEPTUAL FRAMEWORK: MIGRANT CONSTRUCTION WORKERS

This paper will discuss migrant construction workers (MCWs) in the Indian labour law by means of the Code of Social Security, 2020. The Code takes an inclusive approach by specifying the notion of the unorganised workers in Section 2(86) and inter-state migrant

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<sup>11</sup> Down To Earth, India's Migrant Construction Workers: An Analysis of Their Welfare Framework (informality & low social security coverage in construction), <https://www.downtoearth.org.in/governance/india-s-migrant-construction-workers-an-analysis-of-their-welfare-framework-79551>

<sup>12</sup> In re Problems & Miseries of Migrant Labourers, (2020) 13 SCC 518 (India)

<sup>13</sup> In re Problems & Miseries of Migrant Labourers, (2021) 4 SCC 85 (India)

<sup>14</sup> Code on Social Security, No. 36 of 2020, pmb. (India)

<sup>15</sup> Standing Comm. on Labour, The Occupational Safety, Health and Working Conditions Code, 2020, Lok Sabha Secretariat, ¶¶ 3.12-3.18 (2021)

<sup>16</sup> Ministry of Labour & Emp., Gov't of India, Report of the Second National Commission on Labour vol. I, ch. 5 (2002)

workers in Section 2(zf) and thus statutorily categorises MCWs. Since construction work is unstructured and project-related, MCWs tend to be in unorganised sector as they lack permanent jobs or written contracts.<sup>17</sup> Section 113 gives the right to self-register and portability of benefits in interstate mobility.

### **PRE-2020 LEGAL REGIME: GAPS AND LIMITATIONS:**

The Building and Other Construction Workers Act 1996 and the Inter-State Migrant Workmen Act 1979 were the main statutes providing statutory protection for migrant construction workers prior to the passing of new Labour Codes. These statutes focused on worker welfare, but institutional weaknesses and ineffective enforcement limited their effectiveness.<sup>18</sup> The BOCW Act 1996 required workers to register with their particular state's welfare board, which would collect money through a Construction Cess, however, such state-based mechanisms were a barrier for a mobile workforce. Additionally, the ISMW Act 1979 had limited geographic coverage and lack of effective enforcement mechanisms. The high thresholds and concentration on organised recruitment meant that the Act did not apply to those who actively migrated or were irregular migrants, whilst the layering of contracting at multiple levels has diluted the responsibility of employers.<sup>19</sup> Therefore, the legal structure provided through pre-2020 legislation could not provide adequate protection to workers.<sup>20</sup>

### **THE LEGISLATIVE OVERVIEW ON SOCIAL SECURITY CODE 2020:**

In India, the Social Security Code, 2020 represents a major advancement to create a single framework for social security through the consolidation and harmonisation of many social security laws into one legislation.<sup>21</sup> It is part of an ongoing effort by the Government of India to simplify, standardise and widen access to social security services through the codification of labour laws. Its aim is to provide universal access to social security services and benefits to all workers, not just those in the formalised labour market as stipulated in the Constitution's Directive Principles of State Policy (DPSP).<sup>22</sup>

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<sup>17</sup> National Commission for Enterprises in the Unorganised Sector, Report on Conditions of Work and Promotion of Livelihoods (2007)

<sup>18</sup> Comptroller & Auditor General of India, Report on Functioning of Building and Other Construction Workers Welfare Boards (2018)

<sup>19</sup> People's Union for Democratic Rights v. Union of India, (1982) 3 S.C.C. 235 (India)

<sup>20</sup> In re: Problems and Miseries of Migrant Labourers, Suo Motu Writ Petition (Civil) No. 6 of 2020, Supreme Court of India

<sup>21</sup> Code on Social Security, No. 36 of 2020, pmbi. (India)

<sup>22</sup> INDIA CONST. arts. 38, 39(e), 41, 42 & 43

The Code serves to clearly specify the responsibilities of both the Central Government and the State Government to develop, finance and implement welfare schemes, individually or collectively, as well as provide for various institutions related to governance, such as the establishment of the Central Board of Trustees, individual Welfare Boards at the state level, and creation of a 'Social Security Fund'.<sup>23</sup> The Inspector-Cum-Facilitator model represents a paradigm shift away from punitive inspection towards supportive regulation and facilitation of compliance.<sup>24</sup> The overall objective of the Code is to achieve the integration of all welfare legislation into one single legal framework and redesign the provision of welfare benefits, as well as to respond to new and emerging forms of work.<sup>25</sup> To be effective, however, the Code will require establishment of Rules (supporting) and subsequent administrative capacity to implement them at an inter-agency level, as well as supportive inter-state coordination particularly for informal and new types of workers (migrant construction workers).<sup>26</sup>

### **MIGRANT CONSTRUCTION WORKERS UNDER THE CODE ON SOCIAL SECURITY, 2020:**

Although the Code on Social Security, 2020 brings promises of reform, implementing this social security legislation, having emerged from a promise into a deliverable, still remains a serious challenge, especially within the unorganized sector of construction. The key to Aadhaar-based registration within the portal of NDUW/ e-SHRAM is a strong stumbling block, given semi-literacy, lack of internet connectivity, Aadhaar-based mobile numbers and bank accounts, leading to unsuccessful registrations and inaccuracies within registration,<sup>27</sup> thereby excluding those who are most vulnerable.<sup>28</sup> Additionally, portability necessitates proper coordination between disintegrated state social security departments, managing BOCW cess funds, increasing risks of bureaucratic bottlenecks.<sup>29</sup> There is a lack of proper accountability within this act regarding multi-tier subcontracting, protecting principal contractors.<sup>30</sup> The act remains financially unsustainable without mandatory contribution from employers, thereby being dependent on state budgetary allocations, making social security measures prone to

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<sup>23</sup> Code on Social Security, No. 36 of 2020, §§ 6, 15, 109, 113, 141 (India)

<sup>24</sup> Code on Social Security, No. 36 of 2020, § 122 (India)

<sup>25</sup> Statement of Objects & Reasons, Code on Social Security Bill, 2019, Bill No. 185 of 2019 (India)

<sup>26</sup> Standing Comm. on Labour, *The Code on Social Security, 2020*, Lok Sabha Secretariat, ¶¶ 6.7–6.15 (2021)

<sup>27</sup> Ministry of Labour & Employment, Government of India, e-SHRAM Portal Dashboard (2021-22)

<sup>28</sup> In re: Problems and Miseries of Migrant Labourers, *Suo Motu Writ Petition (Civil) No. 6 of 2020*, Supreme Court of India

<sup>29</sup> Comptroller & Auditor General of India, *Performance Audit on Building and Other Construction Workers Welfare Cess (2018)*

<sup>30</sup> *People's Union for Democratic Rights v. Union of India*, (1982) 3 S.C.C. 235 (India)

political instability.

## **INCLUSION OR ILLUSION? A CRITICAL EVALUATION OF THE SOCIAL SECURITY CODE 2020**

The Social Security Code 2020 has been claimed to be a revolutionary reform that will enable universal social security and eliminate historical disadvantages that have plagued India's labour welfare system. Extending the recognition of statutory protections to unorganised workers, gig workers, workers on platforms and inter-State migrant workers demonstrates the legislative intent to promote inclusiveness with respect to labour welfare issues.<sup>31</sup> However, when determining the level of protection provided by the Code compared with current jurisprudence from the Supreme Court, there is no clear way to estimate the level of protection offered by the Code based on what is currently known.

The main weakness of the Code is that it requires all registration of workers and their benefits to occur digitally and through self-registration processes. In *In Re: Problems and Miseries of Migrant Labourers (2020-21)*, the Supreme Court pointed out that there was no reliable database for migrant labourers to help identify them and provide access to state welfare benefits. It further stated that the State failed to identify who, when, and how many migrant labourers were affected during the COVID-19 pandemic and to assist them.<sup>32</sup> While the Code has methods to register workers, it relies heavily on digital and self-registration methods, creating the risk of continuing the lack of visibility to which the Supreme Court referred.<sup>33</sup> This is particularly a problem for migrant workers in construction, who experience many barriers, including language and technology barriers, as well as lack of documentation.

Additionally, the Code has weak employer accountability provisions, as it reduces the requirement for employers to provide worker protection under the relevant establishment. This is particularly true in industries where the employer is using a large amount of sub-contracting and informal employment.<sup>34</sup> In *Bandhua Mukti Morcha v. Union of India*, the Supreme Court emphasised the obligation of the State under Article 21 to protect workers who are considered

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<sup>31</sup> Code on Social Security, No. 36 of 2020, §§ 2(35), 2(60), 2(61), 2(zf) (India)

<sup>32</sup> *In re Problems & Miseries of Migrant Labourers*, (2020) 13 SCC 518, ¶¶ 7-10 (India)

<sup>33</sup> *In re Problems & Miseries of Migrant Labourers*, (2021) 4 SCC 85, ¶¶ 14-18 (India)

<sup>34</sup> Code on Social Security, No. 36 of 2020, §§ 109, 113 (India) (reliance on registration-based welfare and reduced employer-centric obligations)

vulnerable and provide for humane working conditions.<sup>35</sup> However, under the flexible compliance framework of the Code, and the lack of strong enforcement against principal employers and contractors, there is little chance that the requirements found in the case above will be upheld.

There are significant constitutional implications when there is a disconnect between what the legislature intended when the Laws were made and what happens in reality. *Olga Tellis v. Bombay Municipal Corporation* recognised a person's Right to a "Livelihood" to form part of their Right to Life<sup>36</sup>, whilst *PUCL v. Union of India* affirmed the Right to "Food and Basic Welfare" under the Constitution.<sup>37</sup> The Migrant Crisis clearly demonstrated that the lack of effective social security mechanisms directly threatens such Rights. As a result, the Code could serve as a means of providing only a symbolic level of inclusion, unless it is backed by strong enforcement mechanisms, simple access points and a level of accountability within the institution(s) providing access.

### **CONSTITUTIONAL AND HUMAN RIGHTS PERSPECTIVE:**

The statutory framework regulating migrant construction workers should be scrutinised through the constitutional obligation to social justice, a fundamental principle enshrined in the Preamble. The lack of a strong and transferable social protection framework for this workforce cannot be perceived simply as a policy shortcoming; instead, it raises grave issues of constitutional non-compliance within a welfare-oriented structure. In contemporary constitutional legal theory, the "social" dimension of social justice is achieved when the State proactively safeguards vulnerable workers from the inequalities of unrestrained market forces. Considered in this perspective, the adoption of the code concerning on social security, 2020 signifies a legislative effort to translate the Preamble's normative assurances into concrete and justiciable statutory rights for historically marginalized labour sections.<sup>38</sup>

The Supreme Court has regularly extended the ambit of Article 21 to encompass, the "right to live with human dignity". In the landmark case of *Bandhua Mukti Morcha v. Union of India*, the court ruled that the right to life encompasses safeguarding of well-being and just and

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<sup>35</sup> *Bandhua Mukti Morcha v. Union of India*, (1984) 3 SCC 161 (India)

<sup>36</sup> *Olga Tellis v. Bombay Mun. Corp.*, (1985) 3 SCC 545 (India)

<sup>37</sup> *People's Union for Civil Liberties v. Union of India*, (2001) 5 SCC 546 (India)

<sup>38</sup> Code on Social Security, No. 36 of 2020, pmb. (India); INDIA CONST. pmb.

humane conditions of employment.<sup>39</sup> For a migrant construction worker, social security covering health care and retirement protection, is the substantive basis on which this “entitlement to dignity” rests. In the absence of these, a worker’s life is confined to precarious subsistence, which is contrary to the constitutional vision of a dignified existence.

Whereas the Directive Principles of State Policy (DPSP) are not enforceable in court, they are “fundamental in the governance of the country” under Article 37. The statute concerning social security is an explicit initiative to implement these directives: Article 39 (protection of workers health), Article 41 (right to public assistance), and Articles 42 and 43 (Just and humane conditions of work and a living wage).<sup>40</sup> The aforementioned principles mandate that the State progress, beyond offering a mere “Protective Mechanism” which ensures a decent standard of living for every worker, irrespective of their region.

The operationalisation of the One Nation, One Ration Card (ONORC) programme serves as a juridical precedent for the constitutional objective. Nevertheless, reliance on biometric verification has revealed a digital gap, whereby technical breakdowns risk the exclusion of precisely those workers the programme aims to safeguard.<sup>41</sup>

The importance of judicial intervention in introducing these obligations was additionally emphasized during the COVID-19 migrant crisis. In its 2020 Suo motu proceedings, the supreme court articulated apprehension regarding delays in labourer registration and directed measures to expedite the e-shram platform and universalize ONORC.<sup>42</sup> Such advancements emphasize the State’s positive obligation to recognize, track and safeguard all workers. Therefore, the code on Social Security (2020) must be rigorously assessed to determine whether it accomplishes the same degree of uninterrupted portability and accessibility for healthcare, retirement benefits, and other social security rights as ONORC has initiated for the food benefits.<sup>43</sup>

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<sup>39</sup> Bandhua Mukti Morcha v. Union of India, (1984) 3 SCC 161, ¶¶ 10-14 (India)

<sup>40</sup>INDIA CONST. arts. 37, 39, 41, 42 & 43

<sup>41</sup> State of Maharashtra v. Peoples’ Union for Civil Liberties, (2021) 5 SCC 529, ¶¶ 52-58 (India) (recognising ONORC portability and addressing Aadhaar-related exclusion)

<sup>42</sup> In re Problems & Miseries of Migrant Labourers, (2020) 13 SCC 518, ¶¶ 12-18 (India); In re Problems & Miseries of Migrant Labourers, (2021) 4 SCC 85 (India)

<sup>43</sup> Ministry of Consumer Affs., Food & Pub. Distrib., Gov’t of India, One Nation One Ration Card Scheme: Operational Guidelines (2021)

## EMPIRICAL ASSESSMENT OF MIGRANT CONSTRUCTION WORKERS UNDER THE SOCIAL SECURITY CODE

According to the data collected, migrant workers in the construction field experience a large difference between what is laid out in the Social Security Code (2020) and the realities of working in construction on a day-to-day basis. Construction sites are still operated through informal systems of work where workers are engaged by contractors without having much knowledge about how to get registered or what types of entitlements there are, which contributes to their being structurally invisible<sup>44</sup>. After the introduction of the Code, migrant workers continue to be excluded due to lack of access to formalized systems, including digital registration, inability to register due to Aadhaar-linked documents and language barriers<sup>45</sup>. Judicial records and audit reports during COVID-19 period reveal continuous exclusion and distress migration.

In the absence of an adequate governance framework, NGOs and unions have filled the gaps<sup>46</sup> by assisting workers through registration, legal aid and emergency assistance, especially during the pandemic. However, many individual charities and unions offer these services and are therefore not well-coordinated<sup>47</sup>. Compared to State practices, the dividing lines between reaching out to workers in the States are blurred by the states relying solely on a digital approach. Overall, migrant workers in the construction sector do not yet have full access to the benefits outlined in the Code<sup>48</sup>.

This research takes a socio-legal perspective using empirical evidence derived from judicial decisions as an empirical resource. The reason for using judicial decisions as an empirical resource for this research is that the courts fulfil a role as fact-finding authorities, specifically for claims in employment-based welfare cases, which are developed by successive government departments based upon declarations made under oath by the Government and Welfare Boards and supported by audit reports issued by Statutory Bodies, Medical and Expert Reports on workplace health, and Compliance Reports of Statutory Bodies, as well as through Workers' Own Testimony.

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<sup>44</sup> The Hindu, Underutilisation of Construction Workers' Welfare Funds Raises Concerns (2023)

<sup>45</sup> Jan Sahas, Safe Migration and Worker Protection in India: Field Insights (2022)

<sup>46</sup> Aajeevika Bureau, Migrant Workers and Access to Social Security (2021)

<sup>47</sup> Times of India, Construction Workers Protest Demanding Welfare Benefits (2023)

<sup>48</sup> The Indian Express, Uneven State Implementation of Labour Welfare Measures (2022)

Evidence of vulnerabilities to health has been found in several recent cases involving construction workers' rights, most notably People's Rights and Social Research Centre (PRASAR) v. Union of India (Supreme Court, 2024). The Supreme Court looked at a variety of sources of information to support its findings that construction and allied workers are at high risk for developing silicosis due to their work.

Additional evidence supporting the findings of health-related vulnerabilities to construction workers comes from National Campaign Committee for Central Legislation on Construction Labour v. Delhi Building and Other Construction Workers Board (Delhi High Court, 2024-25)<sup>49</sup>. The High Court found that health-related vulnerabilities were regularly created by denying benefits based on the temporary non-registration or non-payment of contributions by workers in the Delhi area because the workers had changed jobs or moved to different areas and did not have the time or money to make the necessary changes to their registration or contributions. Understanding the need for workers with intermittent employment and migration to have access to their benefits, the High Court ordered that administrators of construction workers' welfare programs interpret them liberally and allow the adjustment of unpaid contributions of workers to the benefits they receive from welfare programs.

In addition to the findings in National Campaign Committee for Central Legislation on Construction Labour v. Delhi Building and Other Construction Workers Board (Delhi High Court, 2024-25), there were also findings of similar exclusionary patterns affecting migrant and women workers shown in Sita Devi v. Delhi Building and Other Construction Workers Board (Delhi High Court, 2024)<sup>50</sup> based on the experiences of individual workers and administrative records.

The Supreme Court's GRAP-related compensation order establishes that income insecurity exists due to regulatory shutdowns (2025).<sup>51</sup> Through labour cess fund data, pollution control notifications, and State Compliance reports, The Court determined that the imposition of

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<sup>49</sup> National Campaign Committee for Central Legislation on Construction Labour v. Delhi Building & Other Construction Workers Board, Delhi H.C., W.P.(C) No. 1245/2024, ¶¶ 12–20 (2024-25) (finding that temporary non-registration and non-payment of contributions led to denial of benefits)

<sup>50</sup> Sita Devi v. Delhi Building & Other Construction Workers Board, Delhi H.C., W.P.(C) No. 987/2024, ¶¶ 8-15 (2024) (highlighting exclusion of migrant and women workers from welfare benefits)

<sup>51</sup> Supreme Court of India, GRAP-Related Compensation Order (2025), available at <https://www.sci.gov.in> (last visited Dec. 21, 2025) (establishing income insecurity due to regulatory shutdowns and directing compensation)

construction bans causes an immediate loss of livelihood for workers, and thus ordered a directive for compensation from welfare funds.

### **COMPARATIVE AND INTERNATIONAL PERSPECTIVES:**

The protection of migrant construction workers constitutes a crucial domain in international labour regulation, influenced by the enduring conflict between international normative standards and fragmented domestic implementation. The International Labour Organization (ILO) lays down the normative “benchmark standard” through conventions No.118 (Equality of Treatment)<sup>52</sup> and No. 157 (Maintenance of Social Security Rights)<sup>53</sup>, which require equality of social security benefits between migrant workers and citizens and emphasize the portability of acquired rights across territories.

Internationally, two prevailing frameworks of social security for migrant workers can be recognized. The European Union’s transnational harmonisation framework enables the uninterrupted accumulation and transferability of social security benefits across member states.<sup>54</sup> In contrast, the Philippine framework depends on Unilateral, State-sponsored social welfare funds, such as the Overseas Workers Welfare Administration (OWWA), to safeguard its citizens engaged overseas.<sup>55</sup> A third model is seen in the Gulf Cooperation Council (GCC) countries, where protection has traditionally been confined to employer-driven terminal service payments, though recent changes suggest a gradual transition toward contribution-based social insurance systems.<sup>56</sup>

India’s transition toward a consolidated labour governance framework, through the enactment of the code on Social Security, 2020 and the Occupational Safety, Health and Working Conditions Code, 2020 signifies a substantial measure towards convergence with international norms.<sup>57</sup> By Consolidating 29 fragmented labour statutes, the new structure establishes, a National Minimum Wage and Aadhaar-linked Universal Account Numbers (UAN), facilitating

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<sup>52</sup> International Labour Organization, Convention No. 118: Equality of Treatment (Social Security Convention), adopted June 28, 1962

<sup>53</sup> International Labour Organization, Convention No. 157: Maintenance of Social Security Rights Convention, adopted June 21, 1982

<sup>54</sup> Regulation (EC) No. 883/2004 of the European Parliament and of the Council on the Coordination of Social Security Systems, 2004 O.J. (L 166) 1

<sup>55</sup> Republic Act No. 10801 (2016) (Phil.) (establishing the Overseas Workers Welfare Administration (OWWA) as a dedicated welfare fund for migrant workers

<sup>56</sup> International Labour Organization, Social Protection for Migrant Workers in GCC Countries 7-12 (2018)

<sup>57</sup> Code on Social Security, No. 36 of 2020 (India); Occupational Safety, Health and Working Conditions Code, No. 37 of 2020 (India)

domestic portability of social security benefits through e-Shram portal.<sup>58</sup> The Statutory recognition of interstate migrant workers, combined with portability under the Public Distribution system and benefits such as travel allowances, indicates an incremental acceptance of the “detachment” principle widely recognised in international labour law.<sup>59</sup>

Nevertheless, to attain real equality with international leading standards, India must go beyond internal regularisation. Broadening, Bilateral Social Security Agreements (SSAs) with major labour-importing states remains essential to ensure that social security operates as a uninterrupted and portable rights, instead an advantage geographically restricted within national boundaries.<sup>60</sup>

## **THE PARADIGM SHIFT IN MIGRANT WELFARE: TOWARDS A RIGHTS-BASED FRAMEWORK**

The contemporary “Policy Evolution” for India’s migrant construction workforce is characterised by shift from ad-hoc assistance measures to a structured Rights-based portability Framework. Historically, the “exclusive” character of state-based social security systems produced a “citizenship gap,” wherein traversing state boundaries led in the immediate forfeiture of social protections.<sup>61</sup>

Beyond mere registration, the emphasis has moved towards institutionalizing Economic and Legal autonomy. A critical mechanism in this evolution is the Recognition of prior learning (RPL), which formalizes implicit informal proficiency into “Skill Credits”.<sup>62</sup> This accreditation enables worker to circumvent exploitative labour intermediaries and negotiate remuneration aligned with the National Floor Wage.<sup>63</sup> Moreover, the establishment of Inter-State Coordination units has started to substitute exploitative networks with open, state-monitored labour channels between “Source” and “Host” areas.<sup>64</sup>

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<sup>58</sup> Ministry of Labour & Emp., Gov’t of India, e-Shram Portal: National Database of Unorganised Workers (2021)

<sup>59</sup> Int’l Labour Org., Equality of Treatment (Social Security) Convention, 1962 (No. 118); Maintenance of Social Security Rights Convention, 1982 (No. 157)

<sup>60</sup> Int’l Labour Org., Bilateral Social Security Agreements and Portability of Benefits 7-11 (2019)

<sup>61</sup> Amartya Sen, Inequality Re-examined 114-18 (Harvard Univ. Press 1992) (discussing exclusion arising from territorially bounded welfare systems)

<sup>62</sup> Ministry of Skill Dev. & Entrepreneurship, Gov’t of India, Recognition of Prior Learning (RPL) Guidelines (2016)

<sup>63</sup> Code on Wages, No. 29 of 2019, §§ 3-9 (India)

<sup>64</sup> NITI Aayog, Inter-State Migrant Labour: Institutional Coordination and Policy Responses (2022)

The Ultimate aim of this transition is the reinstatement of human dignity. Through the enlargement of Affordable Rental Housing Complexes (ARHCs) and the compulsory issuance of appointment letters under the new labour codes, the state is regularising the earlier hidden employer-employee relationship.<sup>65</sup> By combining financial inclusion, portable education for migrant children through the NDEAR framework, and extended legal remedy through a three-year wage claim window, India is recharacterizing the migrant identity shifting from transient labour to an acknowledged, empowered contributor to the county's economy.

### CONCLUSION:

Although the Social Security Code, 2020 has enormous potential, the migrant construction worker community remains largely left out from comprehensive social security on account of complicated formalities, digital exclusion, and poor welfare board management.<sup>66</sup> Judicial observations invariably reveal implementation deficits and invoke constitutional principles such as the right to life with dignity,<sup>67</sup> liberalized welfare policies, and proportionality not only to bridge intended legislation and actual conditions on the ground.<sup>68</sup> It also to affect a paradigm shift towards achieving the objective of social security itself from paper realization to actuality on the ground through judicial surveillance, administrative changes, digital interface solutions, audits, evidence-based policymaking, and state-driven implementation along with NGO and trade union cooperation.

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<sup>65</sup> Code on Social Security, No. 36 of 2020, §§ 89, 113 (India); Ministry of Hous. & Urb. Affs., Affordable Rental Housing Complexes Scheme (2020)

<sup>66</sup> International Labour Organization, India Wage Report: Wage Policies for Decent Work and Inclusive Growth (2018)

<sup>67</sup> *Olga Tellis v. Bombay Mun. Corp.*, (1985) 3 S.C.C. 545 (India)

<sup>68</sup> Ministry of Labour & Employment, Government of India, e-SHRAM Portal Status Reports (2021-22)