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## **Constitutional Promises, Ground Realities: A Human Rights Critique of India's Treatment of Migrant Workers**

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### **ABSTRACT**

Labour migration within India has emerged as a complex and dynamic phenomenon deeply rooted in socio-economic inequalities, regional imbalances, and informal employment structures. Inter-state migrant workers, who form the backbone of several critical sectors of the Indian economy, remain among the most neglected and vulnerable populations in terms of rights, recognition, and representation. Despite constitutional safeguards and international human rights norms, these workers face systemic exclusion from basic entitlements and protections. This paper critically examines the human rights dimensions of inter-state labour migration in India. It explores the legal and policy frameworks, evaluates constitutional and judicial responses, and identifies the institutional shortcomings that have perpetuated the vulnerability of migrant workers. Adopting a rights-based approach, the paper offers a constructive critique and proposes reforms to ensure dignity, equality, and justice for internal migrants in India.

### **INTRODUCTION**

Internal migration, particularly labour migration across state boundaries, is a defining feature of India's socio-economic landscape. Millions of Indians migrate from one state to another in search of livelihood, often moving from agriculturally stagnant and economically backward regions to more industrialised or urban centres.<sup>3</sup> These inter-state migrant workers, although vital to the functioning of the economy, are frequently subjected to hazardous work conditions, inadequate housing, wage theft, and social discrimination. The recent COVID-19 pandemic laid bare the glaring vulnerabilities faced by this invisible workforce, revealing the absence of any robust system for their protection and welfare.

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<sup>3</sup> Jean Dreze, *Employment as a Right*, 44(10) Econ. & Pol. Wkly. 50 (2009).

While discussions on migration have often centred around economic growth, remittances, and demographic shifts, the human rights implications have received comparatively limited scholarly and policy attention. Migration is not merely an economic choice but often a compulsion driven by structural deprivation, caste-based exclusion, and lack of opportunity. Hence, a rights-based approach to labour migration becomes imperative one that views migrant workers as rights-holders entitled to dignity, protection, and participation in decisions that affect their lives.<sup>4</sup>

This paper seeks to critically analyse the protection of inter-state migrant workers in India through the prism of human rights. It interrogates the constitutional guarantees, statutory frameworks, and international obligations that are meant to ensure the welfare and dignity of migrant workers. It also highlights the key challenges they face in accessing their rights and entitlements, and argues for a more inclusive, accountable, and rights-oriented migration governance regime.

## **MIGRATION AS A HUMAN RIGHTS CONCERN**

Migration, when viewed from a human rights perspective, implicates a wide range of civil, political, economic, and social rights. These include the right to equality and non-discrimination, the right to life and dignity, the right to freedom of movement and residence, the right to work and fair conditions of employment, the right to health and education, and the right to social security. These rights are not merely aspirational ideals but are codified in India's Constitution and reinforced by international treaties and conventions to which India is a party.<sup>5</sup>

Articles 14, 15, 19, and 21 of the Indian Constitution form the cornerstone of the rights framework applicable to migrant workers. Article 14 guarantees equality before the law, while Article 15 prohibits discrimination on grounds of religion, race, caste, sex, or place of birth. Article 19(1)(d) and (e) protect the freedom to move freely throughout the territory of India and to reside and settle in any part of the country. Most importantly, Article 21 guarantees the right to life and personal liberty, which has been expansively interpreted by the Supreme Court to include the right to live with dignity, the right to health, and the right to livelihood.<sup>6</sup>

Internationally, India has ratified core human rights treaties such as the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR), which oblige the state to ensure decent work, social security, adequate standard of living, and access to justice. However, India has yet to ratify the

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<sup>4</sup> Ravi Srivastava, *Labour Migration in India: Recent Trends, Patterns and Policy Issues*, 55(11) Indian J. Labour Econ. 157 (2012).

<sup>5</sup> Jan Breman, *The Making and Unmaking of an Industrial Working Class: Sliding Down the Labour Hierarchy in Ahmedabad, India*, 46(1) Oxford Dev. Stud. 60 (2018).

<sup>6</sup> Neetha N., *Invisibility of Women Migrant Workers in Labour Market Statistics: Need for Reforms*, 57(30) Econ. & Pol. Wkly. 46 (2022).

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990), thereby signalling an ambivalence towards fully integrating international human rights standards into its domestic migration policies.<sup>7</sup>

### **Legal and Policy Framework for Migrant Workers**

The principal legislation addressing the protection of inter-state migrant workers is the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979. This Act mandates the registration of establishments employing inter-state migrants, provision of displacement allowances, journey allowances, suitable accommodation, and equal wages. However, the enforcement of the Act has been largely ineffective, with low registration rates, inadequate inspections, and poor awareness among workers and employers alike.<sup>8</sup>

In 2020, the Indian Parliament passed a set of four Labour Codes, consolidating over 40 existing labour laws. Among these, the Occupational Safety, Health and Working Conditions Code, 2020, and the Code on Social Security, 2020, are relevant to migrant workers. Although the new codes promise universal social security and portability of benefits, critics argue that they weaken existing protections by providing greater flexibility to employers and relying heavily on digital platforms like the e-Shram portal, which may exclude technologically illiterate or undocumented workers.

Various welfare schemes have also been introduced, including the One Nation One Ration Card (ONORC) scheme, which aims to ensure food security portability across states. Despite these efforts, implementation remains inconsistent and fraught with bureaucratic hurdles, often leaving migrants without access to even the most basic entitlements.<sup>9</sup>

### **CHALLENGES FACED BY INTER-STATE MIGRANT WORKERS**

Inter-state migrant workers in India face multidimensional challenges that undermine their human rights. One of the most pressing issues is the denial of legal recognition and identity. Migrants frequently lack local documentation such as ration cards, voter ID cards, or labour registration, which excludes them from state-run welfare schemes and social protection measures. This exclusion is further compounded by linguistic, cultural, and social barriers that hinder access to justice and redress.

The working conditions of migrant labourers, particularly in the construction, manufacturing, domestic work, and transport sectors, are often exploitative. Most are engaged through informal contracts, without written agreements, social security, or healthcare. Wage theft, long working

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<sup>7</sup> *Id.*

<sup>8</sup> R. B. Bhagat, *Migration and Urban Transition in India: Implications for Development*, 45(29) Econ. & Pol. Wkly. 54 (2010).

<sup>9</sup> Amitabh Kundu, *Internal Migration and Inclusive Development in India*, 19(3) J. South Asian Dev. 237 (2020).

hours, occupational hazards, and sexual exploitation of female migrants are widespread. The absence of complaint mechanisms or labour union support further reinforces their vulnerability.<sup>10</sup>

Housing and sanitation constitute another major challenge. Migrants are typically housed in overcrowded and unsanitary settlements, lacking access to clean water, toilets, electricity, or waste management. These living conditions pose severe health risks and violate the right to an adequate standard of living as recognised in both national and international law.

Furthermore, political invisibility remains a critical issue. Since most migrants retain voter registration in their home states, they are unable to participate in elections at their place of work, resulting in a lack of political representation and neglect in urban governance. This democratic deficit perpetuates their marginalisation and ensures that their voices remain unheard in policy-making processes.<sup>11</sup>

### **JUDICIAL RESPONSE AND EMERGING JURISPRUDENCE**

The Indian judiciary has played a mixed role in addressing the plight of migrant workers. During the COVID-19 crisis, the Supreme Court initially adopted a deferential approach towards the executive, refraining from issuing strong directives. However, in a later suo motu writ petition, the Court ordered the Centre and states to ensure free transportation, food, and shelter for stranded migrants. The judiciary also directed the establishment of migrant helplines, counselling centres, and data collection mechanisms.

Other significant judicial pronouncements include cases relating to the utilisation of welfare funds under the Building and Other Construction Workers (BOCW) Act and the right of migrants to access ration cards and health services. While these interventions are commendable, they have largely been reactive, episodic, and confined to emergency responses rather than long-term structural change. There remains a need for sustained judicial engagement with the systemic issues faced by migrants, grounded in constitutional and international human rights principles.<sup>12</sup>

### **POLICY GAPS AND THE WAY FORWARD**

Despite numerous schemes and announcements, India's migration governance framework remains fragmented and state-centric. There is a glaring absence of a comprehensive national policy on internal migration that recognises migrant workers as a distinct category deserving of special protection. Inter-state coordination mechanisms are either weak or non-existent, resulting in jurisdictional ambiguity and administrative inaction.

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<sup>10</sup> *Id.*

<sup>11</sup> Shalini Bharat & Sushma Maithreyi, *Internal Migration and Health in India: A Dynamic Approach*, 18(1) Indian J. Hum. Dev. 23 (2024).

<sup>12</sup> *Id.*

To address these challenges, a rights-based approach must be adopted. This would entail legal reforms to strengthen enforceable protections for migrants, the establishment of dedicated migration commissions to ensure policy coherence, and the creation of institutional mechanisms for grievance redressal. Portability of entitlements across states, political inclusion through mobile voter registration, and investment in decent housing and healthcare are equally critical.<sup>13</sup>

Civil society organisations and trade unions must be empowered to facilitate rights awareness, legal aid, and worker collectivisation. Data systems like the e-Shram portal should be made more inclusive, decentralised, and integrated with ground-level service delivery. Most importantly, migrant workers must be recognised as active participants in the democratic process, entitled to dignity, justice, and voice.

## **CONCLUSION**

Inter-state migrant workers in India represent the paradox of economic indispensability and legal invisibility. They sustain cities, industries, and services, yet remain excluded from the benefits of citizenship and development. The human rights framework offers a powerful normative and legal basis for their protection, but realising this promise requires a fundamental shift in governance, from bureaucratic charity to democratic accountability.

The protection of migrant workers must cease to be viewed as a logistical challenge and be reimagined as a moral and constitutional imperative. Only then can India move towards a truly inclusive and rights-respecting model of development, where every worker, regardless of origin, can live and work with dignity.

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<sup>13</sup> Sujata Gothoskar, *Gender Concerns in Labour Market Policies: Focus on Women Migrant Workers*, 52(1) Indian J. Gender Stud. 79 (2017).