

RIGHTS OF MIGRANT WORKERS WITH REFERENCE TO HUMAN RIGHTS PERSPECTIVES

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Abstract

Labour rights are human rights, and the ability to exercise these rights in the workplace is prerequisite for workers to enjoy a broad range of other rights like economic, social, cultural and political. Since, some of the worst violations happen among informal, migrant and women workers in global supply chains. Today most states despite their efforts have remained ineffective in regulating the movement of migrant workers and also screening them properly. Policymakers need to take a practical approach towards the protection of the rights of the migrant labourers as their social situation is difficult. It is a well-observed fact that most countries have taken a lackadaisical approach towards the ILO standards for migrant labourers/ workers. Apparently countries are supposed to incorporate legislative frameworks in accordance with the ILO standards, however, most have failed to do so. The labour laws in India still have a long way to go. Thus, this study determined that while existing law provides substantial coverage for the displaced persons, there nonetheless are significant areas in which it fails to provide sufficient legal protection on account of a number of gaps and grey areas in the law. Such serious gaps could arise in situations falling below the threshold of application of humanitarian law and when restriction or even derogation of a number of human rights may be allowed. Therefore, it is suggested to governments emphasize the need to define comprehensive, coordinated migration policy and practice based on economic, social and development concerns rather than reactive control measures to ensure beneficial migration, social harmony, and dignified treatment of locals and non-locals.

Keywords: Migrant workers, human rights, labourers, laws.

Introduction:

Migration has been a significant part of human history as it has shaped societies and economies due to the intermixing of different cultures. Diversification of economy and increased land productivity in certain areas, rapid improvement in transport and communication means, improvement in education, increase in population pressure and zeal for improving living added momentum to the mobility of population in India (Roy, 2011)¹. Moreover, movement for economic and financial purposes has gained immense popularity over the past few decades, millions travel from developing to developed countries in the pursuit of economic advantages and better quality

¹ Roy, S., (2011) *Consequences of migration in India: Need and pragmatic solution*, *Economic Affairs*, 56 (1): 41-48.

of life. The need for food and better climatic conditions has made the ancient people migrate to one place to other (Christopher Joyce, 2012)². In the modern times humans have migrated in search of work, better opportunities, studies or due to terrorism, wars or natural disasters or adverse climatic changes to other countries thus making them migrants, irrespective of their choice or necessity, it can either be in a controlled manner, through legal immigration or uncontrolled, violating immigration laws also known illegal immigrants (Linguère Mously Mbaye, 2017)³.

In 2020, the IOM World Migration Report stated that there are an estimated 272 million international immigrants in 2019 in comparison to 51 million in 2010 and two-thirds were labour migrants. These astonishing numbers implies the significant need for protecting them against discrimination on the basis of race, colour, language, religion, poverty, social and cultural disparities. Hence in order to protect migrant workers UN in 1990 made comprehensive rules in the International Convention on the Protection of the Rights of All Migrant Workers and Members Of Their Families to enjoy the rights regardless their legal status for who qualify as migrant workers under its provisions and the General Assembly proclaimed 18th December as International Migrants Day in 2000. The Universal Declaration of Human Rights has codified Rights of Migrants as a part of Human rights international legal framework after world war-II. The Sustainable Development Goals (SDGs) and the Migration Governance Indicators (MGI) act as tools to assess, measure the governance in education, health and social security at local and national levels.

Regulations concerning migrant labourers in India

One of the most important labour rights is the right to decent working conditions and social security. The inception of the concept of social security took place at the time of the French Revolution, 1793.

The Indian Constitution protects labour's rights. This aspect is circumscribed within the Preamble, the Fundamental Rights and the Directive Principles of State Policy under Part IV of the Constitution. Minimum rights are guaranteed in the workplace according to the Constitution. This enables workers and employees to translate economic growth into social security. Integrated development is only possible if all kinds of workers have their fair share of rights. The Preamble itself portrays that the Indian Constitution prescribes and promotes social justice for workers. There are various labour specific legislations along with government social- security schemes. Thus, legislations concerning migrant workers in India are:

Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979: The primary purpose of Inter-State Migrant Workmen (Regulation of Employment and

² Christopher Joyce (2012). *What Drove Early Man Across Globe? Climate Change*. September 17, 2012, <https://www.npr.org/2012/09/17/161278993/what-drove-early-man-across-globe-climate-change>

³ United Nations Human Rights Council. "The Slow Onset Effects of Climate Change and Human Rights Protection for Cross-Border Migrants." March 23, 2018. Pg 10.

Linguère Mously Mbaye (2017). *Climate change, natural disasters, and migration*. IZA World of Labor: 346, <https://wol.iza.org/articles/climate-change-natural-disasters-and-migration/long>

Conditions of Service) Act, 1979 is to benefit migrant workmen. The framework of the legislation is spread over 7 chapters. The legislation encompasses registration of establishments employing inter-state migrant workmen, licensing of contractors, duties and obligations of contractors, welfare facilities etc. that needs to be provided to the workers.

Employees' Compensation Act, 1923: The Employees' Compensation Act, 1923 is another important piece of legislation that provides protection to all kinds of workers (including migrant workers). With the increasing use of machinery, the need for manpower is going down. This leads to comparative poverty of the workmen. Thus, workmen are prone to accidents even at the risk of losing their lives. Therefore, in order to protect migrant workers from such hardships, this legislation was enacted.

Payment of Wages Act, 1936: The Payment of Wages Act, 1936 ensures the regular and prompt payment of wages. Untimely payment of remuneration is a type of exploitation and in order to prevent this, legislation came into force. The imposition of Arbitrary fines on migrant workers is also prevented.

Minimum Wages Act, 1948: The primary purpose of the Minimum Wages Act, 1948 is to fix, review and revise the minimum rates of wages. This Act safeguards the interests of the migrant workers or workers engaged in unorganised sectors. This sect of workers is especially vulnerable to exploitation owing to their illiteracy and inability to bargain.

The Maternity Benefit Act, 1961: This Act is intended to achieve social justice for women workers (including migrant workers). The Maternity Benefit Act, 1961 has provisions under it that is for the well being of the women migrant workers pre and post their pregnancy.

Equal Remuneration Act, 1976: This legislation is proposed to achieve the 'Equal pay for equal work' motto amongst migrant workers. The Equal Remuneration Act, 1976 has an overriding effect on any other law or legislation or any court award, agreement, contract of service which otherwise suggests or orders anything that violates this motto.

The Unorganised Workers' Social Security Act, 2008: The aim of this legislation is to provide social security to the workers of the unorganized sector. The collective term, 'unorganized sector' is exhaustively defined under the Unorganised Workers' Social Security Act, 2008 and the scope of this Act includes migrant workers.

Sexual Harassment of Women employees at Workplace Act, 2013: This act prohibits any kind of sexual Harassment of the women workers at the workplace. This Act came into force from 9 December 2013.

Literature review

Those who migrate to new areas experience certain socio-psychological and legal problems of adjustments with the residents of place of migration. In this context various issues have propped up over the years regarding labour rights for migrant workers as more and more migrant workers

were exposed to exploitation. Thus, governments across the world have realised the importance of recognising labour rights as a part of human rights (ILO, 1998)⁴.

Tim de Meyer (2023)⁵ said International labour standards (ILS) give expression to human rights at work, including the right to work; the right to social security; the right to safe and healthy working conditions; the right to fair wages and equal remuneration for work of equal value; the right to rest, leisure and reasonable limitation of working hours and periodic holidays with pay; and the right to maternity protection.

Sankalpita Pal (2020)⁶ said that it is astonishing to note that even after the existence of a plethora of legislation and labour standards at the national and international level, there still remains a wide gap between basic human rights of labourers and the legal framework governing their rights.

Justice Ashok Bhushan (Indian Express Web Desk, May 28, 2020)⁷ said that the originating state shall provide meals and water at the station and during the journey, the Railways would provide the same to the migrant workers. It indicates that migrant workers have the right to be provided food and water for travel in trains or buses.

Anushka Chand (2023)⁸ said that there are 15 guidelines with respect to the protection of rights of migrants. Among those rack information on conflicts and natural disasters, and potential impact on migrants, empower them to help other migrants, their families, and communities during and in the aftermath of crises, involve them in contingency planning and integrate their needs and capacities, and facilitate their ability to move to safety are very much important role in protection of migrant workers.

According to Patrick A. Taran (2000)⁹ evidence demonstrates that violations of migrants' human rights are so widespread and commonplace that they are a defining feature of international migration today.

Heikki S. Mattila (2000)¹⁰ noted in his study that migrants enjoy the protection of international law, where key human rights instruments oblige the States Parties to extend their protection to all human beings.

Analysis and discussion

⁴ International Labour Organization (1998). *Introduction Labour rights, human rights, International Labour Review*, Vol. 137 (1998), No. 2

⁵ Tim de Meyer (2023). *International labour standards as human rights. International Labour Organization*, https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_860960/lang--en/index.htm

⁶ Sankalpita Pal (2020). *Rights of migrant workers in India. August 27, 2020. https://blog.ipleaders.in/rights-of-migrant-workers-in-india/*

⁷ <https://indianexpress.com/article/india/migrant-crisis-who-is-paying-their-train-fare-asks-sc>

⁸ Anushka Chand (2023). *Rights of migrant workers in India. https://taxguru.in/corporate-law/rights-migrant-workers-india.html*

⁹ Patrick A. Taran (2000). *Human Rights of Migrants: Challenges of the New Decade. International Organization for Migration, International Migration Vol. 38 (6) Special Issue 3/2000*

¹⁰ Heikki S. Mattila (2000). *Protection of Migrants' Human Rights: Principles and Practice. International Organization for Migration, International Migration Vol. 38 (6) Special Issue 3/2000*

A counter-offensive against human rights as universal, indivisible and inalienable underlies resistance to extension of human rights protection to migrants. Every day the media conveys terrible human rights violations that affect individuals who live in countries of which they are not nationals. Migration occurs for a variety of reasons, including poverty, civil conflicts and insecurity or persecution for reasons of race, ethnic origin, religion, language or political views. States whose citizens migrate for these reasons share these problems with states that receive large numbers of migrants. Human rights violations hypothetically arise for the receiving or “desired” State that rejects inflows of migrants. Such violations occur insofar as the national populations cannot be contained within their home countries. A common outcome of this phenomenon is that people become undocumented cross-border migrants. Although everyone has the right, in accordance with the basic international human rights instruments, to leave the country of origin and to re-enter it, the right to enter the territory of another state is limited to its sovereignty and to the existent specific bilateral or multilateral agreements in this matter. However, once the person is admitted, he/she must be treated according to the standards applied to all persons living under the same territory independent of their origin, language, gender or religion.

Thousands of migrants who have been forced to leave their countries due to violence, poverty or natural disasters are often discriminated against because of their racial, ethnic or national characteristics. Due to the vulnerable situation in which migrants are placed in countries of transit and reception when faced with violent or non-violent manifestations and acts of racism and xenophobia, the international community must adopt effective and concrete measures to promote and protect the human rights of migrants, irrespective of their migratory situations. I am encouraged that a number of countries have approached the mandate for expert advice on ways and means to avoid incipient acts of racism and xenophobia against migrant populations in their countries.

Many migrant populations suffer from structural discrimination manifested in different ways of exclusion and limited labour insertion opportunities. Abuse of migrants has intensified and there is little support for the idea of migrant rights. Therefore, resistance to recognition of migrants’ rights is bound up in exploitation of migrants in marginal, low status, inadequately regulated or illegal sectors of economic activity.

Moreover, ‘Right to Work’ is a fundamental right, which has given by the Indian Constitution to all its citizens irrespective of caste, creed, gender, religion, and other demographics. Therefore, everyone has the right to work anywhere in the country with dignity of labour and living standards. Even though there are Judicial Laws for accidents or deaths to the labourer or worker, they are not getting sufficient justice in this regard.

Conclusion

In conclusion, it can be said that most states despite their efforts have remained ineffective in regulating the movement of migrant workers and also screening them properly. Policymakers need to take a practical approach towards the protection of the rights of the migrant labourers as their social situation is already difficult. It is a well-observed fact that most countries have taken a

lackadaisical approach towards the ILO standards for migrant labourers/ workers. Ostensibly countries are supposed to incorporate legislative frameworks in accordance with the ILO standards, however, most have failed to do so. The labour laws in India still have a long way to go. Thus, this study determined that while existing law provides substantial coverage for the displaced persons, there nonetheless are significant areas in which it fails to provide sufficient legal protection on account of a number of gaps and grey areas in the law. Such serious gaps could arise in situations falling below the threshold of application of humanitarian law and when restriction or even derogation of a number of human rights may be allowed. While the unwanted incidents like accidents or deaths occur at workplace and damage the labourers or the workers the government or the agency who engaged the labour in the work should come forward and provide necessary benefits or the compensation to protect the workers or their family members under principle of natural justice. Therefore, it is suggested to governments emphasize the need to define comprehensive, coordinated migration policy and practice based on economic, social and development concerns rather than reactive control measures to ensure beneficial migration, social harmony, and dignified treatment of locals and non-locals.

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