



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium, provided the original work is properly cited.

Rights of Migrant workers

Prerna Pahwa^a

^aVivekananda Institute of Professional Studies, New Delhi, India

Received 21 January 2022; Accepted 05 February 2022; Published 08 February 2022

Migration is not a recent phenomenon but has been followed for ages. Migration is very crucial from the demographic point of view. Poverty, unemployment, and underdevelopment are the major push factors for migration. Due to this many workers migrate from rural areas to urban areas in the search of work. There are numerous legislations explained in this article that are framed by the government for the amelioration and security of migrant workers. International labor organization is the only tripartite United Nations agency that sets out standards for the security of migrant laborers. Despite having thousands of rules and regulations be it domestically or internationally. Migrant laborers are among the most vulnerable class in our society. COVID-19 times have been the toughest times for them they grappled a lot to survive. There is a wide gap between the legal framework and their human rights which needs to be acknowledged at the earliest. Laws and regulations need time to time amendments to improve their conditions. This article draws attention to the condition of migrant workers in our country.

Keywords: COVid-19, migration, lockdown, legislations.

INTRODUCTION

“Migrant workers are defined as a person who migrates from one country to another [or who has migrated from one country to another] with a view to being employed other than on his own account and includes any person regularly admitted as a migrant for employment.”¹

- International Labour Organization

“Migrant labor, casual and unskilled worker who move about systematically from one region to another offering their services on a temporary, usually seasonal basis.”²

- Britannica

Migration is not a recent phenomenon but it has been followed for ages. Migrant workers move from one place to another in the search of work. They leave their families behind and move to bigger cities alone so that they can support their families. There are two types of techniques of production that is labor-intensive techniques and capital-intensive techniques.³ The introduction of capital intensive techniques was one of the major reasons for seeking more employment opportunities they move from rural to urban areas as capital intensive techniques reduced the requirement of the workforce.

According to the 2011 census, the total number of migrant workers in India is 37% of India's population which also includes inter-state migrant workers and migrants within the state. The study by the center for the study of developing societies [CSDS] and Azim Premji University in 2019 estimated that 29% of India's population in biggest cities are of daily wage workers and the report of the working group of migrant workers shows that part of migrant workers is higher in the sector for females and the maximum number of males migrant workers are engaged in public services and modern services. In our Indian constitution, the rights of migrant workers are secured under fundamental rights and directive principles of state policies. There are some articles for the betterment of migrant workers.

¹ 'Migrant Workers' (International Labour Organization, June 1999)

<<https://www.ilo.org/public/english/standards/relm/ilc/ilc87/r3-1b2.htm>> accessed 17 January 2022

² 'Migrant Workers' (Britannica) <<https://www.britannica.com/topic/migrant-labour>> accessed 17 January 2022

³ Sandeep Garg, *Indian Economic Development* (Dhanpat Rai Publication)

ARTICLE 14: Article 14 of the constitution is a fundamental right under Part III of the Indian constitution. It talks about equality before the law, it states that the state shall not discriminate based on gender, sex, caste, religion, etc.⁴

ARTICLE 23⁵: This article prohibits human trafficking and forced labor. In this article, the state is not prevented from commanding compulsory services for public purposes. The state shall not discriminate based on sex, color, caste, race, or any other. This article not only protects against the state but also from private citizens.

ARTICLE 41⁶: It ensures that every person has the right to work, education, seek public assistance as per their economic capacity and development. Also, it states that the state should make proper provisions for the unemployed and for in the case of old age, sickness and disablement, or any other issues.

ARTICLE 43⁷: This article ensures the security of all workers in terms of wages, working environment ensuring a suitable standard of life, and fulfillment of social and cultural opportunities. Also, it aims to enhance cottage industries on an individual or co-operative level in rural areas.”

ARTICLE 43-A⁸: This article ensures that the state is taking proper measures to protect the engagement of workers in the management of undertakings, establishments, or other organizations in any industry.

FACTORS AFFECTING MIGRATION

There are multiple factors that affect migration in our country. These factors are:

Economic Factors: Migration is primarily persuaded by economic factors. Lack of employment opportunities, unemployment, and low agricultural incomes is the basic factors that compel migrants to proceed from one place to another in the look for better working condition, employment, better facilities, etc.

⁴ Constitution of India, 1950, art 14

⁵ Constitution of India, 1950, art 23

⁶ Constitution of India, 1950, art 41

⁷ Constitution of India, 1950, art 43

⁸ Constitution of India, 1950, art 43A

Demographic Factor: The differences in the size of the population, language, age, education are some of the factors which influence people to move from one place to another. Marriage can also be the reason because women usually follow their spouses.

Socio-Culture Factor: Socio-culture factor also plays a significant role in migration. It includes family conflicts, the need for better education, the quest for independence, urban-oriented environment.

Political Factor: Apart from Economic factors, Demographic factors, and Socio-culture factors there are political factors that compel people to proceed from one place to another. War, persecution, and the absence of political rights are the primary political factors in migration.

LEGISLATIONS CONCERNING MIGRANT LABOURERS IN INDIA

Inter-State Migrant Workmen [Regulation of Employment and Condition of Service] Act, 1979⁹: It manages the employment of interstate migrants and their working surroundings. In this law, if a contractor wants to employ laborers from one state to another state then the contractor has to obtain a license to do so. The contractor has to give all the guidelines of the agreement on what premises they are recruiting labour. This provision is beneficial as the system of registration will help to create a system of accountability keep the record of the number of inter-state migrants with the government and provide data for regulating their conditions of service.

Payment of Wages Act, 1936¹⁰: It laid emphasis on the payment of wages to the employees. This law seems to be a cure against unjustified deduction in the wages of the employees or delay in the payment. Under section 6 of the act, the payment to the employer can be made in currency notes or coins. If the employer wants to make payment through cheque or by bank transaction then, the employer has to take the consent in writing from the employee. The payment of wages should be made within the first week of the month where the number of employees is less than 1000 and 10th day otherwise.

⁹ 'Inter-State Migrant Workmen' (*Chief Labour Commissioner: Central*) <<https://clc.gov.in/clc/acts-rules/inter-state-migrant-workmen#:~:text=Migrant%20Workmen%20%28Regulation%20of%20Employment%20and%20Conditions%20of,prevalent%20in%20Orissa%20and%20in%20some%20other%20States.>> accessed 18 January 2022

¹⁰ Payment of Wages Act, 1936

Employees Compensation Act, 1923¹¹: It ensures the proper compensation amount to be paid to the employees in the case of an accident, grievances, or occupational disease. It also ensures that any dispute or case related to the compensation of employees should be ascertained by the commissioner along with the powers of the civil court. In this act, the employer is the master and the employee is the servant. The compensation will only be provided if the injury happens during the course of employment. The concept of vicarious liability applies in this act.

Equal Remuneration Act, 1976¹²: It states that both men and women should be equally remunerated for the same work of a similar kind. In this act discrimination based on sex, for providing remuneration is prohibited and it also emphasizes the discrimination faced by women in recruiting process. This act helps to bridge the gap between the inequalities in remuneration faced by the government.

Minimum Wages Act, 1948¹³: This act regulates fixing a minimum wage for workers. The act provides jurisdiction in fixing wages to both center and the state. If a worker is remunerated less than the prescribed minimum wage then it is considered to be forced labor. Under this act, wages boards are set up to evaluate the industry's capacity to pay and fix minimum wage so that they can at least fulfill their family's basic necessities.

The Maternity Benefits [Amendment] Act, 2017¹⁴: This act replaced the maternity benefit act, of 1961¹⁵. This act provides protection to employed women during the time of pregnancy and provides multiple maternity incentives to them. This act is applicable to all organizations which have 10 or more employees in factories, shops, and other entities.

The Unorganised Workers Social Security Act, 2008¹⁶: It is under the ministry of labor and employment. 90% of the workforce in India is occupied in the unorganized sector. This act helps to implement welfare schemes and to provide social security.¹⁷

¹¹ Employees Compensation Act, 1923

¹² Equal Remuneration Act, 1923

¹³ Minimum wages Act, 1948

¹⁴ The Maternity Benefits (Amendments) Act, 2017

¹⁵ The Maternity Benefit Act, 1961

¹⁶ The Unorganized Workers Social Security Act, 2008

¹⁷ *Ibid*

INTERNATIONAL LABOUR ORGANISATION [ILO]

It was established in 1919 through the treaty of Versailles. It is considered as an affiliated International organization to promote social justice. It internationally acknowledged human and labor rights whose main motive is to provide social justice which is essential for universal and lasting peace. It is the only tripartite U.N agency that unites government, employees, and workers representatives from 187 member states to look after various labor issues such as by setting labor standards, developing policies, and devising programs to promote decent work for all men and women. It has its headquarters in Geneva, Switzerland. ILO received a noble prize in 1969 for improving peace among different classes, ensuring decent work and justice for all workers, and providing technical support to other developing nations.

IMPACT OF LOCKDOWN ON MIGRANT WORKERS

Due to the widespread of COVID-19 in the whole world. Lockdown was imposed under the epidemic disease act, 1897¹⁸, and the disaster management act, 2005¹⁹. Restrictions on traveling, home quarantine, social distancing, masking up were essential to impose to stop the virus from spreading. These government guidelines move people into a new phase of their life. This not only affects the poor families but affects all sections of society be it economically or psychologically. Shutting down of businesses, people losing their jobs left them in a depression. The number of suicides showed an upsurge during the lockdown period. There were two types of people the one who was living in their homes during the lockdown and the other hand there were migrant workers, who have to leave the big cities due to economic unsustainability and lack of food, water, and shelter. They walked miles on the expressway in the hope of getting a bus to reach their hometown. It was like the biggest nightmare for them walking with heavy bags on their heads along with their children barefoot. This not only impacted them economically but emotionally also.

¹⁸ Epidemic Disease Act, 1897

¹⁹ Disaster Management Act, 2005

STATE RULING

On 27 March, Home Ministry gave orders to utilize the national disaster response fund [NDRF]²⁰ to provide food and shelter to the migrant workers so that they would not move during the lockdown.²¹ On 29 March, the government passed orders and directed landlords and employers not to charge rent and cut wages respectively during the lockdown period. On 16 May, the government declared the national migration information system [NMIS]²², an online database developed by the National Disaster Management Authority [NDMA]. It was created to support the motion of migrant workers. It will help states find the current number of stranded migrant workers and their location.

On 14 July, the Ministry of Human Resource Development directed the state government to develop a database of children of rural areas who have migrated. Delhi government supplied free food to 4 lakh people every day as of late March and set up relief camps to stop them from migrating. Hunger relief centers were also arranged by the Delhi government. There were many food camps that come under the authority of the government and NGO'S.²³ Kerala government provided them food, carrom boards, mobile recharge facilities, and medical essentials such as masks, sanitizer, and medicines. Kerala government also add north Indian food to the menu to stop them from leaving their relief camps. Uttar Pradesh government arranged buses at Delhi's Anand Vihar bus stations so that they can take migrants for free to their hometowns. A large crowd of people gathered at the bus station. Due to this social distancing became impossible.

²⁰ 'Guideline for National Disaster Response Fund (NDRF)' (*Dea.Gov.in*) <<https://dea.gov.in/sites/default/files/Guidelines%20for%20National%20Disaster%20Response%20Fund%20%28NDRF%29.pdf>> accessed 15 January 2022

²¹ 'Centre committed all support to migrant workers during lockdown' (*The Print*, 28 March 2020) <<https://theprint.in/india/centre-committed-all-support-to-migrant-workers-during-lockdown-home-minister-amit-shah/390502/>> accessed 19 January 2022

²² 'National Migrant Information System (NMIS) - a central online repository on Migrant Workers - developed by NDMA to facilitate their seamless movement across States' (*Pib.Gov.in*, 16 May 2020) <<https://www.pib.gov.in/PressReleasePage.aspx?PRID=1624540>> accessed 19 January 2022

²³ 'Centre, state failed in migrant workers crisis in COVID-19 lockdown: Delhi HC' (*The Economics Times*, 19 April 2021) <<https://m.economicstimes.com/news/india/centre-state-failed-in-migrant-workers-crisis-in-covid-19-lockdown-delhi-hc/articleshow/82147876.cms>> accessed 19 January 2022

On 1 May, the central government asked Indian railways to start “shramik special” trains for the migrant workers. The facility was not free there were some supplementary charges over the nominal fare. The central government faced a lot of condemnation due to this. Then, the government declared that the Indian railways would offer 85% subsidy on train fares and 15% by the states. However, the migrants were still obligated to pay an unsaid amount. Initially, the central government refused to share the information related to this with the Supreme Court but later on committed that it was not paying anyone’s fare²⁴. Migrants claimed that they faced many hardships during traveling there was no proper arrangement of food and water. A train traveling from goa to Manipur was 58-Hours delayed. Many migrants died during traveling in these trains but the railway claimed that most of them had existing illnesses. In inclusion, these trains spread the virus around the country.²⁵

SUPREME COURT HEARING

On 30th March, the Supreme Court heard a petition filed by of the migrant workers and ordered the central government to submit a report about the condition of migrant workers. The central government stated that the migrant workers started moving in the fear generated by fake rumors that lockdown will last for 3 months.²⁶ On 21 April, the Supreme Court rejected the plea of migrant workers for requesting payment of minimum wages on basis of workers previously being paid free meals. On 16 May, the Supreme Court refused the PIL directing the district magistrates to *provide free transport services to migrant workers* and also held that it is the duty of the state government to look after this matter. The Supreme Court further stated requested migrant workers to hold back for their turn instead of walking.

On 26 May, the Supreme Court noted that the condition of migrant workers had still not improved. There are some “inadequacies and certain lapses” on the part of the government.

²⁴ Krishnadas Rajagopal, ‘Corona Virus Lockdown | Deaths in Shramik trains not due to lack of food, water, says government’ (*The Hindu*, 05 June 2020) <<https://www.thehindu.com/news/national/coronavirus-lockdown-deaths-in-shramik-trains-not-due-to-lack-of-food-water-says-government/article31759464.ece>> accessed 18 January 2022

²⁵ *Ibid*

²⁶ ‘Supreme Court steps up for migrant workers in NCR’ (*The Indian Express*, 13 May 2021) <<https://indianexpress.com/article/cities/delhi/supreme-court-steps-up-for-migrant-workers-in-ncr-arrange-rations-transport-7314178/>> accessed 18 January 2022

Then, the court orders the central and the state government to provide free food and shelter to all the migrant workers.

CONCLUSION

In conclusion, it can be said that migrant workers are the highly unprotected section of society. Despite many rules and regulations, they are deprived of their basic human rights. They have to work in unsanitary conditions sometimes making them vulnerable to many diseases. Some women workers working in unsanitary conditions are more to get infected with reproductive tract infections. Living in crowded, unhabituated conditions with no job security and sometimes not getting wages on time or unjustified deductions in the wages makes them feel deprived of their basic rights. Despite these complex problems they still have to work for their living and to feed their families.

COVID-19 has been a roller coaster ride for everyone throughout the world. But the ones who suffered the most during the lockdown were migrant workers. Many migrant workers died during moving towards their hometowns. They not just fight economically but also mentally. The government of India had implemented at its best. Despite having so many legislations, standards, and guidelines by the international labor organization. We are still lagging behind in providing them with a safe working environment for them. There is a need to bridge the gap between the legal framework and their human right. Legislations and laws for them need to be amended so that they can work effectively in the current situation. But still, there is hope, we are not where we meant to be but also not where we used to be. One day that world, said to have weak wings, will soar.