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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **PROTECTING MIGRANT WORKERS IN INDIA: AN ANALYSIS OF LABOUR RIGHTS AND STANDARDS**

AUTHORED BY - UDESH TANWAR

## **ABSTRACT**

The COVID-19 pandemic and subsequent lockdowns in India severely impacted migrant workers, highlighting gaps in labour laws and policies. While some received aid from employers and local authorities, many faced challenges returning home. This study examines the effectiveness of existing labour laws, including the 2020 Occupational Safety, Health and Working Conditions Code, in mitigating the pandemic's impact on migrant labourers. We propose a comprehensive framework of labour laws and policies aimed at enhancing protections for migrant and minimum wage workers against future crises.

**Keyword:** Migrant Workers, Labour Rights, Labour Standards, Social Security, Collective Representation.

## **INTRODUCTION:**

India, a nation known for its vast and diverse workforce, witnessed unprecedented challenges during the COVID-19 pandemic, particularly affecting its migrant labour population. Migrant workers, constituting a significant portion of India's labour force, found themselves at the epicenter of an unfolding humanitarian crisis as the country went into lockdown to curb the spread of the virus. Many were left stranded, facing unemployment, financial hardships, and a struggle for basic necessities.

Labour rights and standards, the backbone of any equitable employment system, came under scrutiny like never before. The pandemic exposed glaring disparities in the treatment and protection of migrant workers, emphasizing the urgent need for robust and inclusive labour laws and policies. While India has made strides in consolidating and strengthening its labour laws through recent legislative efforts, the focus on safeguarding the rights and well-being of migrant workers remains a critical area requiring attention.

This study aims to delve into the intricacies of labour rights and standards for migrant workers in India, with a specific focus on the challenges posed by the COVID-19 pandemic. We will examine

the existing legal framework, including the Occupational Safety, Health and Working Conditions Code enacted in 2020, and assess its adequacy in providing protection to migrant labourers during times of crisis. Furthermore, we will propose a roadmap of labour laws and policies that could potentially bridge the existing gaps and ensure a more secure and dignified working environment for migrant and minimum wage workers in India.

The industrial revolution in Europe in the 18th and 19th centuries led to the emergence of a new class of factory workers in the world economy. Capital and labour were key factors in production, leading to the rise of producers and workers in the private economy. To maintain labour standards and welfare, the International Labour Organization was established in 1919 under the treaty of Versailles. The Universal Declaration of Human Rights, adopted after World War II, is a fundamental international instrument in shaping social, economic, and political policies in many developed and developing countries. Core rights, as per the International Labour Organization, are crucial for the working class in the global economy. India, a developing country, adopted a new economic policy in 1991, known as liberalization, privatization, and globalizations (LPG), which has significantly impacted its face. In the era of globalization, it is crucial to discuss labor standards and rights, as well as dimensions of decent work for migrant workers in developing countries like India.

## **CONCEPT OF DECENT WORK**

Decent work refers to the acceptable quality of work, ensuring workers are pleasant and satisfied with their work. It encompasses various freedoms and rights for men, women, and children, promoting the development of society and workers according to labor standards. Decent work encompasses wage employment, self-employment, and home working, and is based on core labor standards such as freedom of association, collective bargaining, freedom from discrimination, and child labor.

Decent work is a broad concept related to the overall development of society and workers, capturing interrelated social and economic goals of development. Development involves removing unfreedoms such as poverty, lack of access to public infrastructures, or denial of civil rights. It brings together different types of freedoms such as labor rights, social security, and employment opportunities.

There are four dimensions of decent work: work and employment itself, rights at work, security, and respectful at work dialogue. The goal of decent work is based on sound ethical principles of the International Labour Organization (ILO). The main goal is to promote opportunities for women and



men to obtain decent and productive work in conditions of freedom, equity, security, and human dignity.

Mishra (2001) highlights the global population's position in the global economy, with about three billion people living on less than \$2 a day, indicating that half of the global population is not close to a decent standard of living.<sup>2</sup>

## **LABOURS RIGHT**

Labour rights, particularly social security, are fundamental rights guaranteed by law to all individuals who live their own labor and find themselves unable to work temporarily or permanently for their control. The first beginnings of social security can be traced back to the French Revolution when a Declaration of the Rights of Man was proclaimed. According to Article 22 of the Universal Declaration of Human Rights, every member of society has a right to social security.

The International Labour Organization (ILO) declaration on fundamental principles and rights at work is a major step in this direction. Development must improve living conditions and ensure the provision of basic human needs at all.<sup>3</sup> The United Nations' international covenant on economic social and cultural rights is another international instrument bestowing workers with economic social and cultural rights.

Citizenship rights are essential for the attainment of an individual's full intellectual, moral, and spiritual status. The guarantee of minimum rights at the workplace will enable people to claim and realize a fair share of the wealth, translating economic growth into social equality.

According to the Directive Principles of State Policy of the Indian Constitution, the state is required to secure citizens' rights to an adequate means of livelihood, equal pay for equal work, protection against abuse and exploitation, economic necessity, health and strength, opportunities for children to develop in a healthy manner, and protection against exploitation and moral and material abandonment.

Citizenship rights are essential for the development of citizens, as they are key dimensions of an impoverished life. Mishra (2001) states that the right to move freely between countries or the globe

is a basic right that should not be denied to workers.

## **LABOURS STANDARDS**

The International Labour Organization (ILO) has played a crucial role in promoting International Labour Standards (ILS) through various conferences. The Declaration of Philadelphia in 1944 restated the ILO's fundamental aims and purposes. Labor standards are often referred to as fair labor standards, minimum labor standards, or basic or core labor standards. Non-observance of these standards can be attributed to factors such as unfair trade, underdevelopment, and lack of workplace cooperation.

The ILO passed the convention on June 1976 to improve labor conditions through tripartite committees. The last ACP-EEC convention was signed in 1984, and the world summit on social development in 1995 established an international consensus on fundamental minimum labour standards. Since its inception, the ILO has adopted 181 legally binding conventions and 188 recommendations aimed at improving labor standards worldwide.<sup>4</sup>

There are eight core labour standards, including the right to freedom of association and collective bargaining, elimination of forced labor, elimination of child labor, and elimination of discrimination in occupation and wages. The ILO provides for tripartite arrangements between employers, workers, and states to legislate and execute these standards in member countries. These standards protect workers in various sectors, including freedom of association, equal pay for equal work, safe working conditions, abolition of forced labor and sex-based discrimination, employment protection, social security, protection of migrant workers, and elimination of sexual harassment of women workers.

## **LABOUR STANDARDS FOR WORKERS IN INDIA**

India, a founding member of the International Labour Organization (ILO), has ratified 37 of the 181 conventions, upholding the fundamental principles of the seven core international labour standards. However, India has not ratified the freedom of association and the right to collective bargaining conventions due to technical difficulties involving trade union rights for civil servants.<sup>5</sup>

The Indian Constitution upholds the principle of equality between men and women, with laws enacted

to fix hours and minimum wages of laborers and improve their living conditions. Various security schemes have been framed, and various labour laws, such as the Trade Union Act 1926, Minimum Wages Act 1948, Employees State Insurance Act 1948, Industrial Disputes Act 1949, Industrial Disputes Decision Act 1955, Payment of Bonus Act 1955, Personal Injuries (compensation insurance) Act 1963, Maternity Benefits Act 1967, Contract Labour (Regulation and Abolition) Act 1970, Bonded Labour Systems (Abolition) Act 1976, Equal Remuneration Act 1976, Interstate Migrant Workmen (Regulation of Employment) Conditions of Service Act 1979, and The Child Labour (prohibition and Regulation) Act 1986, are applicable only to workers in the organized sector.

Unorganized workers in India constitute 92% of the total workforce, while an estimated 8% of the labor force falls in the formal or organized sector, which is protected by compressive labour laws covering Industrial Disputes, Unfair dismissal trade union rights, wage and working conditions, health, insurance, and security schemes.<sup>6</sup>

## **DETERMINENTS OF MIGRATION**

Migration, a significant issue in developing countries, has been theorized since the 19th century and has been influenced by social, cultural, distant, and economic factors. In India, migration began during British colonial rule to meet capitalist development needs. Labour was recruited from rural areas and regulated to keep women and children in villages while males migrated to the modern sector.

There are two main factors of migration: distance and duration. Distance can be classified into four categories: Rural to Rural, Rural to Urban, Urban to Rural, Urban to Urban, and Urban to Urban. Migration can also be categorized into intra-district, inter-district, intra-state, inter-state, national, and international.<sup>7</sup>

Distance can be studied in three categories: casual-temporary, periodic-seasonal, and permanent. Todaro (1969) categorized migration in developing countries into push and pull factors, emphasizing the situation at the origin and the destination. Push factors include unemployment, floods, earthquakes, and natural calamities, while pull factors include attraction to city life, education, health and job opportunities.

For tribal and lower income groups, push and pull factors include ecological, demographic, and social

and cultural factors.

## **MIGRATION OF LABOUR IN INDIA**

Droughts occur once every five years in some parts of India, such as West Bengal, Madhya Pradesh, Kerala, and parts of Maharashtra. These natural calamities affect cultivators, small and marginal farmers, agricultural laborers, and landless laborers. Desarda (1987) argues that drought is not caused by nature but by the failure of the system to properly plan and use land and water resources.<sup>8</sup>

Critics argue that chronic underemployment in rural areas is primarily due to the failure of seasons and lack of resources. At present, about 27.5% of the population in India is below the poverty line, with 27.8% of the population below the poverty line in 2004-05. State-level data on poverty ratios during 2000-2004 shows that states with poverty ratios less than 15% were Jammu and Kashmir, Punjab, Haryana, Himachal Pradesh, Delhi, and Andhra Pradesh, while those with poverty ratios above 30% were Maharashtra, Uttar Pradesh, Bihar, Jharkhand, Madhya Pradesh, Chattisgarh, Uttarakhand, and Orissa.

In conclusion, the migration of migrant workers in India is a significant issue, highlighting the need for better planning and resource utilization in the country. Poverty is a direct result of unemployment, underemployment, and low productivity in agriculture. Seasonal occupations like agriculture limit job opportunities for all, leading to extended seasonal unemployment in rural areas. This dispirited unemployed labor often leaves their villages and joins overpopulated areas in developing and developed countries. Seasonability and disguised nature of unemployment in the agricultural sector are key factors. Seasonability arises from the inelasticity of primary production time patterns, while disguised unemployment refers to mass unemployment.<sup>9</sup>

In many underdeveloped countries, a part of the labor force does not engage in any form of work, leading to disguised unemployment. This disguised unemployment prevails especially in the agricultural sector of underdeveloped and overpopulated countries. Unemployment affects all types of workers, from small cultivators to migratory agricultural laborers, for periods of time even during the agricultural season.

The marginal productivity of family members in agriculture is negligible or zero, and their



continuance in agriculture would not add food to the total. Many agricultural laborers, small and marginal farmers, do not get enough work during the off-season, leading them to migrate from insufficient food and limited geographical areas to job opportunities. This migration is driven by various reasons, such as migration from drought-prone areas to irrigated and industrially developed areas for part-time work or seasonal jobs.

Dadabhi Naoroji and Lewis have identified various causes of labor migration, including agricultural poverty, decline of village industries, poverty, drought-affected villages, and the presence of small cultivators with inadequate holdings. The 1991 Census of India also mentions business and natural calamities like drought and floods. Karl Marx (1958) highlighted the problem of migrants in agricultural and industrial fields, who often live with camps and are exploited by contractors who exploit them as soldiers of industry. The labor gang system is cheaper for land and factory owners but worst for children and migrant workers.

However, this difficult situation needs to be tackled to save rural marginal farmers, landless and agricultural labor, and migrants.<sup>10</sup> The Royal Commission of Agriculture Report (1927) found that about 75% of the labor employed in large sugar mills in Bihar and Orissa states was composed of migratory labor. This seasonal trend of labor force is also found in other plantation areas in different parts of India.

## STATUS OF MIGRANT LABOUR IN INDIA

The National Commission on Rural Labour in India (NCRL, 1991) estimates over 10 million circular migrants in rural areas, including 4.5 million interstate migrants and 6 million intra-state migrants. Seasonally migrant workers are found in agriculture, plantations, brick kilns, quarries, construction sites, and fish processing. The problem of seasonal migrant workers in the sugar industry and other agro-based industries is not new in India, with over 500 sugar factories operating in the country.<sup>11</sup>

The majority of seasonal workers or poorer live in rural areas and belong to landless laborers, small and marginal farmers, scheduled castes, scheduled tribes, and other backward classes. These people have either no assets with high productivity, few relevant skills, no regular time, or very low-paid jobs seasonal. Migrant workers are engaged in various types of jobs such as brick kilns, salt pans, stone quarries, construction, and agri-business like sugarcane harvesting.

Srivastava's study (1998) shows state-wise data of migrant workers in different sectors of India. Haryana state provides employment to a large number of migrant workers from Uttar Pradesh and Bihar, while Karnataka states employ workers from tea and coffee plantations. West Bengal and Assam states employ migrant labourers from Tamilnadu, Andhra Pradesh, and Bihar.

Migrant workers are recruited directly by farmers themselves or through a chain of middlemen like contractors or mukkadams or thekeddar. In the non-agricultural sector, recruitment is organized through contractors or middlemen in various industries. Loans and advances are adjusted through them, and expenses and transportation costs are deducted from their payments in a few months.

## **QUALITY OF LIFE AND LABOUR STANDARD FOR MIGRANT LABOUR**

The Indian government has enacted numerous labour laws and policies to improve wages and working conditions for workers in both organized and unorganized sectors. However, the quality of life and labor standards for migrant workers in India are often subpar. Both male and female migrant workers receive lower wages than minimum wage stipulated under the Minimum Wages Act, 1948. Seasonally migrant workers work longer hours and have no fixed time of work, with many working more than 12 hours per day.<sup>12</sup>

Migrant women workers are paid lower wages than male workers in certain operations. The Equal Remuneration Act of 1976 does not strictly adhere to the principle of equal pay for equal work. Most migrant workers are illiterate, ignorant, and belong to scheduled castes, tribes, and other socially, economically, and weaker sections of society. They are also the Disadvantaged Groups of Society and Handicapped people who cannot earn a decent living as normal people.

Migrant workers are often unaware of their rights or labor rights, such as equality, right to work, security, living wage, decent standard of life, health, right to form associations, freedom, cultural and educational rights. Unorganized sectors like bamboo cutters, salt collectors, fisherman, leather flayers, tanners, salt workers, beedi workers, hand loom weavers, hand craftsmen, brick kilns, and stone quarries are all victims of this situation. This system breeds intermediaries or middlemen who

reap unmerited benefits at the cost of these workers' labor, leading to unfair labor practices and underdevelopment.<sup>13</sup>

## **SOCIAL SECURITY FOR MIGRANT WORKERS**

The International Labour Organization (ILO) is constitutionally obligated to promote social security programs and measures providing basic income to all in need of protection. Social security systems provide nine types of benefits, including medical care, sickness and maternity benefits, family benefits, unemployment benefits, employment injury, invalidity and survivor's benefits, and oldage benefits. Social security is the foundation of a decent society and the primary source of social legitimacy. However, in most developing countries, there are no bilateral agreements or national legislation specifying the rights of migrant workers, who do not enjoy the benefits of social security schemes in their migrated countries.<sup>14</sup>

In the era of globalization, there has been growing casualization of workers, leading to workers struggling for their labor rights and dignity of life. Unorganized workers have been suffering from unemployment and lack of social security. The ILO estimates that 150 million people are fully unemployed, with many more forced to eke out a living in casual or occasional jobs, low productivity self-employment, or other forms of unemployment. Employers are only interested in maximizing their material profits by paying low and piece-rated wages without accepting responsibility for basic security. Most migrant workers do not have adequate shelter, drinking water, or toilet facilities. Health hazards are a serious problem for migrant workers in various sectors, with construction and brick kiln workers suffering from various diseases due to their occupation or working conditions. Only 10% of the world's workers have truly adequate social protection.

India's workforce is predominantly comprised of women, but their work participation rate remains low compared to the U.S. and Italy. Over 90% of the country's workforce is engaged in the unorganized sector, with only 4% of women employed in organized sectors and 96% in the informal sector. Women workers are generally sexually exploited in these unorganized sectors, and migrant women workers are exposed to the risk of sexual harassment and exploitation.

India has the largest number of working children in the world, with child labor being a significant issue in the unorganized sector. Uniform labour standards for child labor cannot be implemented in

rural and urban areas due to uneven economic development. Bondage labor systems have been reported in various unorganized sectors, with the proportion of bonded labor being more among migrant workers belonging to backward communities like Scheduled castes and scheduled tribes.

New forms of labor bondage can also be found in rural or urban-based industries like rice mills, small-scale carpet workshops, and gem processing ateliers. The state's action to end labor bondage has remained ineffective, and other labor laws such as the Child Labour Prohibition and Abolition Act 1986, Bonded Labour System (Abolition) Act 1976, Maternity Benefits Act 1967, and Equal Remuneration Act have not been effectively implemented to improve working conditions for migrant workers. These labor laws have not also covered workers in the unorganized sectors in the country.<sup>15</sup>



The Bonded Labour Act (1976) was introduced to combat labor restrictions, but it failed to address agrarian bondage and maternity benefits for contract-based migrant women workers in agriculture, construction, and other temporary, seasonal, and part-time jobs. These workers belong to the unorganized sector. In Maharashtra state's sugar factories, pregnant migrant women workers were found to suffer from sickness like toxemia, nutritional anemia, and trichomoniasis. None of the factories provided medical facilities for these workers during pre-natal and post-natal stages. There are significant disparities in maternity benefits provision and the violation of the Maternity Act goes unchallenged due to the lack of strong organization for contract-based seasonal migrant workers in India.

## **COLLECTIVE REPRESENTATION OF MIGRANT LABOUR**

The international covenant on civil and political rights emphasizes the freedom of association of workers, stating that no restrictions should be placed on exercising these rights except those necessary in a democratic society. India, a founding member of the ILO, has ratified 39 of the 182 conventions, but has not ratified the conventions relating to freedom of organization and collective bargaining (No.87 and 98). The Supreme Court of India has ruled that even in legal or justified strikes, the principle of 'no work no pay' can be applied. The Indian Constitution grants the right to association, but the Supreme Court has consistently upheld this right for various reasons. In the Tamilnadu case, government employees and teachers went on strike in July 2003 to protect against changes in service conditions. The Tamilnadu Essential Services Maintenance Act (TESMA) 2002 dismissed employees united under eighteen different trade unions without giving them a chance to hear, violating natural justice principles. The judgment also reflects the ideological domination of the neoliberal agenda in national policies, which claims to bring in labour flexibilization through 'hire and fire' policies.

Citizens of a country should have the right to express grievances, but only workers organized under trade unions have the right to do so. Unorganized workers, such as migrant workers and contract-based workers, belong to lower strata of society and face challenges in achieving labor rights and standards. Migrant workers face issues such as the abolition of contract labor systems, implementation of labor laws, minimum wage payments, social security schemes, insurance, and

labor welfare amenities.<sup>16</sup> The National Commission on Labour report (1969) highlighted the wide disparity in wages and working conditions between direct and contract-based labor. Wage boards have recommended the extension of uniform wage rates for both types of labor, but without effective implementation, contract-based laborers are generally paid below the rates prescribed for regular workers. Conditions of work are also unsatisfactory, with irregular working hours, no security for seasonal jobs, and manipulated accounts. Contract migrant labor prevails in varying degrees in almost all industries, but unorganized workers, like migrants, are not protected, and wages are almost non-existent. Enforcing these rules is difficult.

## **CONCLUSION AND SUGGESTIONS**

The concept of decent work, encompassing work and employment, rights at work, security, and representation, remains a distant reality for a vast majority of India's workforce, particularly those engaged in the unorganized or informal sector. Despite India's advocacy for labor standards within the framework of the International Labour Organization (ILO) Constitution, the implementation of labour policies aimed at safeguarding the rights of migrant workers and those in the informal sector has been largely ineffective.

Migrant workers, often hailing from marginalized and backward communities, face heightened vulnerabilities due to their informal status, illiteracy, and lack of awareness. Their struggle for basic labour rights, including decent working conditions and social security, underscores the pressing need for the Indian government to prioritize the ratification and implementation of key ILO conventions, notably Convention No. 87 on Freedom of Association and Protection of the Right to Organize and Convention No. 98 on the Right to Organize and Collective Bargaining.

### **Suggestions:**

**1. Ratification of International Labour Standards:** India should expedite the process of ratifying all relevant ILO conventions to align its labour laws with international standards and uphold the dignity of labour.

**2. Empowerment of Trade Unions:** Trade unions play a pivotal role in advocating for and protecting the rights of workers. The government should foster an environment conducive to the formation and functioning of trade unions, ensuring workers, both in the industrial and government sectors, have an

inalienable right to strike and collective bargaining.

**3. Uniform Implementation of Labour Standards:** There is an urgent need to ensure uniformity in labour standards across rural and urban areas, bridging the existing gaps in protection and welfare measures available to workers.

**4. Social Security for Informal Sector Workers:** Special emphasis should be placed on extending social security benefits to migrant workers and those engaged in the unorganized sector, providing them with a safety net against economic uncertainties and vulnerabilities.

**5. Awareness and Capacity Building:** Initiatives aimed at raising awareness and enhancing the capacity of migrant workers about their rights, entitlements, and available legal remedies should be prioritized.

**6. Strengthening Enforcement Mechanisms:** The government should bolster its enforcement mechanisms to ensure strict adherence to labour laws and standards, holding employers accountable for any violations and ensuring timely redressal of grievances.

By adopting these suggestions and reinforcing its commitment to promoting decent work, India can take significant strides towards ensuring the holistic development and well-being of its vast and diverse workforce.

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