

DOMESTIC AFFAIRS



Article

DOI: 10.17803/2713-0533.2024.2.28.199-221

Bridging the Labour Regulation Gaps in India's Informal Migrant Economy amid Covid-19 Pandemic: Uncovering Challenges and Results

Suhail Khan

Jamia Millia Islamia, New Delhi, India

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Abstract: Globalisation and liberalisation have enabled the promotion of the working force, leading to an increase in migrant labourers due to social, economic, and political factors responsible for the displacement from rural to urban areas within India and outside India. The author focuses on the jurisprudence and case law favouring the interests of labour, human dignity and social security, constitutional imperatives ensuring the human rights of migrant workers and the obligations of the State, social security legislation and the labour law curbing the exploitation of migrant labourers at national and international levels. The author examines the work of the International Labour Organisation (ILO) and UN specialised agencies regarding protection of migrant labour from exploitation, which have been brought in various covenants, conventions and instruments to uphold human rights of migrant labour and social security. Emerging trends in labour regulation have also been covered. The issues and perspectives of the condition and demography of the migrant labour prove that migrant labour are still not free from the exploitation and ill-treatment and deprived of socially beneficial measures, namely, minimum wages,

allowances for disabilities, unemployment, etc. The paper focuses on the recent trends that emerged due to the spread of Coronavirus disease and lockdown along with the judicial response and a critical appraisal of the new Labour Code.

Keywords: human rights; migrant labour; social security; unorganised sector; labour codes; India

Cite as: Khan, S., (2024). Bridging the Labour Regulation Gaps in India's Informal Migrant Economy amid Covid-19 Pandemic: Uncovering Challenges and Results. *Kutafin Law Review*, 11(2), pp. 199–221, doi: 10.17803/2713-0533.2024.2.28.199-221

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I. Introduction

The onset of liberalization, privatization and globalization have indeed led to the enhancement of interaction between countries of the world in terms of trade and services, which, in turn, has proved to be beneficial for the labour workforce as regards the reaping of those benefits. We have also witnessed various aspects of social, economic and legal nature that have led to the migration of labour. The Republic of India (hereinafter India) has been proactive in implementing various socially beneficial legislation to allow the migrant labourers to be protected from employers' or contractors' exploitation. The International Labour Organization (ILO) has also been instrumental in providing various safeguards to this particular problem but the problem persists.

The organized sector mostly located in the urban areas is less prone to the exploitation as compared with the unorganized sector mainly located in the rural areas where the forms of exploitation range from closures, loss of livelihood, lack of assurance of minimum wages, bonded labour, etc. The informal sector, which is broadly unorganized, plays a very important role in terms of economic standing and other major considerations such as gross domestic product, formation of capital and employment opportunities. The irony is that this sector is the one that is marred by the crisis. The ills that surround the labourers in this sector are mostly due to the lack of awareness of their rights and it is important to notice that the right to livelihood is affected by how other rights are enjoyed what pertains to health, culture, etc. to name a few.

Social security has to be ensured at various levels, as it is important for the assistance to the needy, insurance based upon the social front at par with the contributions and by the virtue of being a welfare state, providing the labourers from their contributions, development programs, schemes, etc. While ensuring the income of labourers, it is also important to protect more individualistic human rights that are in play, namely, personal development and dignity, as there is an apparent inequality between the employer and labourers. This gap has to be bridged by the grant of social security and effective exercise of rights of association and collective bargaining. India, being a socialist state,

to achieve its goals sets out to ensure the rights to work according to choice, fair conditions of work, protection of wages, social security, the right against discrimination along with various regulations that also take the center stage in its implementation.

This paper will encapsulate the recent migrant labourer crisis and social security. Recently India has struggled to maintain and hold on to the protection of migrant labourers on the social and economic levels. With the rapid increase in Coronavirus disease, the economic impact has deteriorated the structures for protection and the lack of consideration in terms of policy has further weakened the whole human rights outreach of the situation. An effective social security net has not been able to be maintained as the economic and social issues of the migrant labourers have not been adequately addressed. The paper deals with the information relevant to the background of the study about the problem of ensuring a comprehensive social security regime followed by a historical background of the subject matter and legislative framework of the same. The issues and perspectives that have led to the need for a rethinking of the social security regime of India in light of the migrant labour crisis are covered in the subsequent paper's sections, followed by suggestions and recommendations from the author's side.

II. Conceptualizing Social Security: A Tool for Alleviation of Migrant Labour Crisis

The concept of social security rests upon the possibilities that can arise in the future and how those have to be countered adequately. The complex nature of the society and the dynamism in social change leads to the conceptual groundwork of this phenomenon and it embodies cultural, economic and social rights with ensuring dignity on the touchstone of social justice (Prakash, 2009). It also rests on the reality that if people have contributed to the welfare of the country, they have to be safeguarded against the perils that exist in their life. It refers to the prevention of social risks and allocation of resources to alleviate hardships and includes social insurance, subsidy schemes and the right necessary to fulfil minimum taxation needs (Mishra, 2016).

It seeks to achieve the preambulatory goal of the welfare state and it also helps in the improvement of the position of migrant labour in that regard by ensuring labour efficiency, keeping the conflict of interest in check and reducing disputes. There was no mention of “social security” in the labour law legislation previously, but very recently it has been mentioned in Section 2(78) of the Code on Social Security, 2020,¹ to mean healthcare, income security for elderly people, sickness, injury, unemployment, etc. On the international front, the Social Security (Minimum Standards) Convention enacted in 1952² embodied basic principles and various standards of common nature that are responsible for ensuring social security.

In the long run, social security helps to deal with the migrant labour crisis as it can go a long way in ensuring the adequate identification of the migrant workers as opposed to previous definitions by the International Labour Organization (ILO) that refers to a person who moves from one place to another for the motive of finding work (Usher, 2004). Another definition provided by the United Nations Convention, 1990,³ defines migrant workers as ones who migrate to another state for an activity that is based on remuneration. Further, the International Organization for Migration (IOM) classifies them into economic migrants and migrants of labour that move because of the search for employment as opposed to economic activity.⁴ In the Indian context, to enhance the outreach of social security, the definition has been expanded, which previously stood as in Section 2(e) of the Inter-State Migrant

¹ Available at: https://labour.gov.in/sites/default/files/ss_code_gazette.pdf [Accessed 18.02.2023].

² Available at: https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-jakarta/documents/publication/wcms_116148.pdf [Accessed 21.02.2023].

³ United Nations Convention of the Rights of all Migrant Workers and Members of their Families 1990. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-rights-all-migrant-workers> [Accessed 03.04.2023].

⁴ United Nations Convention of the Rights of all Migrant Workers and Members of their Families 1990. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-rights-all-migrant-workers> [Accessed 03.04.2023].

Workmen Act, 1979,⁵ that defined inter-state migrant worker as the one employed by a contractor, on an agreement or other arrangement in case of one state to another, without the employer's knowledge. This definition has been broadened to include various workers in the net of social security. Under Section 2(zf) of the Occupational Safety, Health and Working Conditions Code, 2019,⁶ and Section 2(41) of the Code on Social Security, 2020, migrant workers include workers whose family income is less than eighteen thousand rupees, who migrate from one state to another and get employed directly or are self-employed. The other ways by which social security can help in providing a helping hand to the migrant labourer include providing affordable housing facilities, a system for grievance redress, protection against accidental death, pensions, financial assistance, health benefits, adequate livelihood, development of skill and efficient training, services relating to food and nutrition, etc.⁷ They can also help in addressing the migrant labour crisis.

III. Historical Background and Development

The concept of social security needs to be traced from a historical point of view and it is connected to how it has come to the rescue of migrant workers providing them with a net to be secure in social standing.

III.1. The First Formal Social Protection Laws

The concept of social security first originated when the Greeks used to treat the amphorae of olive oil and stockpile them as a means of social security as it was nutritious and could be stored for a longer duration. In

⁵ Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979. Available at: https://www.indiacode.nic.in/bitstream/123456789/13209/1/the_inter-state_migrant_workmen_regulation_of_employment_and_conditions_of_service_act_1979.pdf [Accessed 24.02.2023].

⁶ Available at: https://labour.gov.in/sites/default/files/osh_gazette.pdf [Accessed 27.02.2023].

⁷ Committee Report: Social Security and Welfare Measures for Inter-state Migrant Workers (2021). Available at: <https://prsindia.org/policy/report-summaries/social-security-and-welfare-measures-for-inter-state-migrant-workers> [Accessed 04.01.2023].

medieval times, the European feudal system used to be the moving force and the feudal lords used to provide for serfs on their estate. The charity also remained a positive feature for the means of security. Thereby, various organizations based on guilds, friendly societies, and fraternities came to be known as the ones that could secure social protection for disadvantaged groups. The first formal law in this regard was the English Poor Law of 1601 that recognized economic protection at the social level from the State⁸ that was followed by French's Declaration of Rights of Man in 1793 recognizing the assistance of the public as a sacred duty (Salwe, 2003).

III.2. Developments in India and the International Law

The developments in Germany in 1883 where tradesmen were required to contribute into special fund and that fund was used as social insurance had deeply influenced the world regarding social security. The position in India relating to social security in the present subject matter was provided under the Workmen's Compensation Act, 1923⁹ that was aimed at financial protection in the context of certain events like fatal accidents and bodily injuries. This was soon followed by establishing the International Social Security Association in the year 1927 that aimed at bringing the social security administrations and agencies around the world together under the aegis of the ILO.

The Indian response to this was met by Labour Ministers Conferences whereby sickness insurance legislation and examination of the industries for the application of the scheme was done, which led to the growth of health insurance and comprehensive social insurance set up in this context (Babu, 2010); this, in turn, led to the enactment of Employees' State Insurance Act, 1948.¹⁰ An express mention of the human rights of the migrant workers has also been stated in the

⁸ Social Security History (2004). Available at: <https://www.ssa.gov/history/50ed.html#:~:text=Roosevelt%20signed%20the%20Social%20Security,work%20begun%20by%20the%20Committee> [Accessed 14.07.2023].

⁹ Available at: <https://labour.gov.in/sites/default/files/theworkmenact19231.pdf> [Accessed 12.01.2023].

¹⁰ Available at: https://labour.gov.in/sites/default/files/theemployeesact1948_o.pdf [Accessed 15.01.2023].

Universal Declaration of Human Rights, 1948, granting the freedom of movement as well as the attainment of social security under Art. 22. Other international instruments like International Covenant on Civil and Political Rights, 1966¹¹ recognize the right to self-determine what allows them to migrate and International Covenant on Economic, Social and Cultural Rights, 1966¹² that contributed to the social security rights under Art. 9 and 10 and gave a legal foundation.

III.3. Efforts by ILO and the Onset of Indian Labour Laws

The ILO's contribution in this domain is also worth mentioning. It came up with the labour standards by the virtue of Declaration of Philadelphia for effective labour laws across the world and in particular, the Social Security (Minimum Standards) Convention, 1952, that also mentioned medical care, unemployment benefits, injury and so on as the relevant social security measures. Along with this, the ILO has also been instrumental in enacting the Migration for Employment Convention in 1949 (ILO Convention No. 97),¹³ the Supplementary Provisions of 1975 concerning migrations in abusive conditions and the promotion of equality and opportunity and treatment of migrant workers (No. 143)¹⁴ that provides medical services and appropriation of wages, and Migrant Workers Recommendations (No. 86¹⁵ and 151¹⁶)

¹¹ Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> [Accessed 18.01.2023].

¹² Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights> [Accessed 20.01.2023].

¹³ Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C097 [Accessed 19.03.2023].

¹⁴ Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C143#:~:text=Each%20Member%20of%20which%20this%20Convention%20is%20in%20force%20shall,migrants%20are%20subjected%20during%20their [Accessed 23.03.2023].

¹⁵ Migration for Employment Recommendation (Revised), 1949 (No. 86). Available at: https://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_INSTRUMENT_ID:312424#:~:text=On%20arrival%20in%20the%20country%20of%20destination%2C%20and%20at%20a,as%20information%2C%20instruction%20and%20advice [Accessed 21.03.2023].

¹⁶ Migrant Workers Recommendation, 1975 (No. 151). Available at: https://www.ilo.org/dyn/normlex/en/f?p=1000:12100::NO:12100:P12100_INSTRUMENT_ID:312489 [Accessed 27.03.2023].

ensuring the reunification of migrant workers with their families. Another instrument called the Forced Labour Convention No. 29¹⁷ and No. 105¹⁸ worked persistently for the same cause. Another ILO initiative in this direction was effected in the year 1990.¹⁹ It protected from the human rights violations and trafficking of migrant labourers. The ILO Declaration on Fundamental Principles and Rights at Work recognizes labour rights as human rights and makes them universal while giving various standards against exploitation, e.g., freedom of association, collective bargaining, and eradication of forced labour, etc.

The other social security measures taken by the national legislation were based upon the maternity benefits under the Maternity Benefit Act, 1961,²⁰ and retirement benefits covered by the Employees' Provident Fund and Miscellaneous Provisions Act, 1952.²¹ Moreover, we can refer to the Factories Act, 1948²² that contained various provisions providing security to the workmen from employer tactics like retrenchment and lay-off, and Minimum Wages Act, 1948²³ etc. The Inter-State Migrant Law²⁴ in India has also worked for the organization of migrant workers, various allowances under this law (e.g., displacement, journey, etc.) are

¹⁷ Forced Labour Convention, 1930 (No. 29). Available at: https://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:Co29 [Accessed 30.03.2023].

¹⁸ Abolition of Forced Labour Convention, 1957 (No. 105). Available at: https://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C105 [Accessed 01.04.2023].

¹⁹ United Nations Convention of the Rights of all Migrant Workers and Members of their Families, 1990. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-rights-all-migrant-workers> [Accessed 03.04.2023].

²⁰ Available at: https://labour.gov.in/sites/default/files/the_maternity_benefit_act_1961_o.pdf [Accessed 19.01.2023].

²¹ Available at: https://www.epfindia.gov.in/site_docs/PDFs/Downloads_PDFs/EPFAct1952.pdf [Accessed 21.01.2023].

²² Available at: https://labour.gov.in/sites/default/files/factories_act_1948.pdf [Accessed 03.02.2023].

²³ Available at: <https://clc.gov.in/clc/sites/default/files/MinimumWagesact.pdf> [Accessed 05.02.2023].

²⁴ United Nations Convention of the Rights of all Migrant Workers and Members of their Families, 1990. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-rights-all-migrant-workers> [Accessed 03.04.2023].

also paid but there was a lack of compliance (Swapna, 2022) with the social security; the Unorganized Workers' Social Security Act, 2008²⁵ (hereinafter Social Security Act) also worked for the application of the welfare schemes to the workers of unorganized sector.

IV. Constitutional Imperatives and Legislative Scheme

The Constitution of India gives impetus to the rights of migrant workers and social security; these are characterized as human rights that provide for the specific subject matter.

IV.1. Constitutional Dimensions

Social security to the labour in general can be accorded as protection by attributing it to the Preamble which mentions India to be a “socialist” state that ensures social justice, equality and maintenance of the standard of life of working people.²⁶ Under Schedule VII of the Indian Constitution,²⁷ where List III is referred to as the Concurrent List, both the state and the center are empowered to make laws on Entry nos. 21–24 and 26 that are based upon regulation and control of monopolies, trade unions, disputes in industry and labour, social security, insurance, employment and unemployment, labour welfare, etc.

In *Mangalore Ganesh Beedi Works v. Union of India*,²⁸ it was made clear that labour welfare includes regulation of conditions of employment, wages, compensation, etc. Under Part III of the Constitution, formations of associations within the meaning of Art. 19(1)(c) in case of migrant

²⁵ Available at: https://www.indiacode.nic.in/bitstream/123456789/15481/1/the_unorganised_workers_social_security_act%2C_2008.pdf [Accessed 23.01.2023].

²⁶ D.S. Nakara v. State of Andhra Pradesh AIR 1983 SC 130; Samantha v. State of Andhra Pradesh AIR 1997 SC 3297.

²⁷ Subject matter distribution under Art. 246 of the Indian Constitution, 1950. Available at: <https://cdnbbsr.s3waas.gov.in/s380537a945c7aaa788ccfcd1b99b5d8f/uploads/2023/05/2023050195.pdf> [Accessed 13.01.2023].

²⁸ AIR 1974 SC 1832.

labour crisis and according to *Kameshwar Prasad v. Union of India*²⁹ have the right to form associations or unions. The right to livelihood³⁰ under Art. 21 of the Indian Constitution also holds good ground in the case of denial of the right³¹ to the migrant workers. The imperatives under Art. 39(a) and 41 also explain that there can be a challenge to the deprivation of the right to livelihood.³² The *Asiad Worker's case*³³ also recognized the right against forced labour and ensured dignity³⁴ for the human rights regime of labour welfare. Articles 23 and 24 provide for the right against exploitation that also includes the ascertainment of payment that labourer is entitled to in exchange for the work done.

According to Part IV of the Constitution of India within the scope of Art. 38 that highlights the State's obligation to provide for social order and the promotion in the context of welfare, the State's idea of welfare and social justice was underlined in *Air India Statutory Corpn. v. United Labour Union*³⁵ as it can mitigate the sufferings of deprived sections of society. Further, Art. 39 seeks to provide equal opportunities to adequate livelihood means and distribution of wealth and other resources that are material for serving the common good. The right to work, education and public assistance is ensured in case of unemployment, sickness, etc., under Art. 41. Article 42 also provides for just and humane conditions for the work, Art. 43 guarantees a living wage for workers and so on.

IV.2. Legislative Scheme

The legislations regarding social security in general have been discussed above but the position in context of the migrant labour is discussed in this section. To this day, the Inter-State Migrant Workmen

²⁹ AIR 1962 SC 1166.

³⁰ *Olga Tellis v. Bombay Municipal Corporation* 1985 SCC (3) 545.

³¹ *Bandhua Mukti Morcha v. Union of India* AIR 1997 SC 2218.

³² Equal pay for equal work ensured vide Arts 14 and 16; *Randhir Singh v. Union of India* AIR 1982 SC 879.

³³ *People's Union for Democratic Republic v. Union of India* AIR 1982 SC 1473.

³⁴ See *Francis Coralie v. Union Territory of Delhi* AIR 1981 SC 746 and reaffirmed in *Justice KS Puttaswamy (Retd) v. Union of India* AIR 2017 SC 4161.

³⁵ AIR 1997 SC 645.

Act, 1979 (ISMA) stays in force and covers the aspects of protections and entitlements in the case of migrants and it is conjoined with the Occupational Safety, Health and Working Conditions Code, 2019 (OSH Code). The ISMA has 7 chapters that have relevant provisions for the registration of establishments that deal with the employment of inter-state migrant workmen, conferment of licenses upon contractors, their obligations and other facilities regarding welfare. The Payment of Wages Act, 1936³⁶ helps for the timely payment of wages and prevents exploitation along with arbitrary fines. Employees' Compensation Act, 1923³⁷ works for compensation in dire cases of accidents and other hardships. The Equal Remuneration Act, 1976³⁸ ensures the rule of equal pay for equal work for migrant labourers. The Minimum Wages Act, 1948³⁹ is also useful for the fixation of minimum wages to migrant labourers and reviews it. Another means of social security as stated above appears in the form of maternity⁴⁰ that is also ensured in the letter of law and the Social Security Act applies on the migrant labour of the unorganized sector.

The Factories Act, 1948, the Contract Labour (Abolition and Regulation) Act, 1970,⁴¹ and Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996⁴² provide for various basic rights such as the right to shelter and other facilities like water, latrine facilities, etc. It is pertinent to note that the OSH Code provides well for the migrant workers that are generally hired as contract labourers under Section 59 that deals with the

³⁶ Available at: https://labour.gov.in/sites/default/files/thepaymentofwagesact1936_o.pdf [Accessed 14.02.2023].

³⁷ Available at: https://www.indiacode.nic.in/repealed-act/repealed_act_documents/A1923-08.pdf [Accessed 14.02.2023].

³⁸ Available at: https://www.indiacode.nic.in/bitstream/123456789/17141/1/equal_remuneration_act_1976_o.pdf [Accessed 14.02.2023].

³⁹ Available at: <https://clc.gov.in/clc/sites/default/files/MinimumWagesact.pdf> [Accessed 05.02.2023].

⁴⁰ Maternity Benefit Act, 1961.

⁴¹ Available at: <https://www.indiacode.nic.in/bitstream/123456789/1467/1/A1970-37.pdf> [Accessed 17.02.2023].

⁴² Available at: <https://clc.gov.in/clc/acts-rules/building-and-other-construction-workers> [Accessed 14.02.2023].

establishments that employ at least 10 migrant workers and it also defines the role of contractor in this regard wherein in the ISMA, there was the role of the contractor that would be charging from both sides to fulfil his obligations. On the contrary, under the OSH Code, the role of that intermediary is done away with and extra cost is saved. The OSH Code applies to the workers that belong to the class below the range of Rs. 18,000 under Section 2(zf)(ii) of the same, the ISMA recognized the social security measures such as displacement allowance vide Section 14 and journey allowance under Section 15 of the same, the displacement allowance is not recognized by the OSH Code.

V. Recent Issues and Concerns

There are various issues with the newly assembled codes and the previously existing ISMA concerning social security of migrant workers. Thus, their human rights are in peril. The issues and perspectives are dealt with hereby:

V.1. Maintenance of the National Database of Unorganized Workers

It is very much evident that in the cases of adversity, it is the unorganized workers who are the most affected. Hence, in *Re Problems and Miseries of Migrant Labourers*⁴³ the Supreme Court held that there had to be a National Database for Unorganised Workers (NDUW). The Court found that the benefit of social security schemes should trickle down to them which would be ensured by this portal as unorganized workers were also hit severely by the Covid-19 pandemic. A very big problem underlined ensuring the identification of unorganized workers as there was no effective system to ensure identification that was necessary to target for social upliftment of the workers and provide them with their basic amenities of life, rehabilitate them and get them back to their homes.

⁴³ LL 2021 SC 274. Available at: https://main.sci.gov.in/supremecourt/2022/2157/2157_2022_11_16_36554_Judgement_21-Jul-2022.pdf [Accessed 14.02.2023].

V.2. One Nation One Ration Card Scheme, Community Kitchens for Migrants

The Supreme Court⁴⁴ has been very proactive in recognizing the plight of migrant workers and due to that reason, they were given the privilege of One Nation, One Ration Card Scheme that enabled them to get benefit in any part of the country. The major problem of the unorganized workers was the one that required their recognition and that was not possible as they went untraced in the majority of cases. The food grains and dry ration were also ensured to the migrant workers who were marred by poverty. A community kitchen was also ordered to be set up by the State whereby the migrant workers who cannot get two meals a day, were ensured to cater to those who got stranded in the lockdown. An order was also passed to license all contractors and register all establishments in the context of migrant workers to expedite the process of recognition of migrant labour. The order for *One Ration Card* was necessary to ensure that the universalization of the PDS system for the migrant workers all over the country is made possible and they can get their basic right to food. Setting up of community kitchens was required to ensure meals for at least two times for the migrant labourers who could not afford it. Thus, it was all made possible in this regard.

V.3. Right to Shelter

A huge development in this regard was done when the Supreme Court noticed that there is a fundamental right to life under Art. 21 of the Constitution that includes the right to have food and other necessities. In the migrant workers' context they had to be re-assured and re-affirmed for the better functioning of the human rights framework in the context of migrant workers. There was also recognition of the rights of migrant labourers to be given shelter to ensure that they do not have to suffer and that they have a place for their head. An assurance was given in the Telangana High Court order in *R. Sameer Ahmed v. State*

⁴⁴ LL 2021 SC 274.

of *Telangana*⁴⁵ that allowed the setting up of night shelters for the stranded migrant labourers in the wake of lockdown. The basic right to shelter was necessary for the migrant labourers who were stranded and could not reach their homes and had nowhere to live.

V.4. Food, Medicine and Other Necessities

There was a huge outcry when it was brought to the forefront that the Delhi government had not been able to keep up with the miseries of migrant labourers in the context of them seeking food and medicines despite the resources available to them under the Building and Other Construction Workers Act, 1996. The Delhi High Court came down heavily on the Delhi government in the case of *Rakesh Malhotra v. Govt. of NCT of Delhi*⁴⁶ whereby the steps to counter the Covid-19 situation were explained to the Court. Later the Supreme Court along with the National Human Rights Commission (NHRC) in the *suo motu* case recognized this need, came to the rescue of migrant labourers and gave them their dues by ordering food, medicine and other necessities while ensuring the guidelines regarding the same.

V.5. The Role of National Human Rights Commission

The National Human Rights Commission also participated and gave short-term measures of collecting data on migrant workers, proper implementation of ISMA by ensuring journey allowance, ensuring menstrual hygiene products to women, functioning of shelter homes, identification of industries of migrant labour, help-line to rescue, medical facilities and grant of compensation. Other long-term issues were also mentioned by the NHRC that can help a lot in the alleviation of human rights violations of migrant workers, e.g., amendment of the ISMA to deal with situations like Covid-19, the appointment of

⁴⁵ WP (PIL) No. 58/2020. 2021. Available at: https://www.livelaw.in/pdf_upload/telangana-high-court-covid-19-elections-392584.pdf [Accessed 14.02.2023].

⁴⁶ WP (C) 3031/2020. 2021. Available at: https://www.livelaw.in/pdf_upload/pdf_upload-381174.pdf. [Accessed 15.02.2023].

a claim commissioner to monitor recovery, creation of employment opportunities in the home state, maximum benefits under Social Security Act, formation of Affordable Rental Housing Complex (ARHC), etc.⁴⁷

V.6. Dangers to Migrant Workers

A lot of migrant workers are put in the perils of exploitation and abuse of the worst kind. There are several instances when they are not even paid their minimum wages and they are usually the victims of abuse. Very recently, it was reported that sexual assault cases in the context of women migrant workers had become very frequent and it was frowned upon by the court in the case of *A.P. Suryaprakasam v. Superintendent of Police*⁴⁸ where a migrant worker who had come to Madras in search of work and got sexually assaulted in an unfortunate state of affairs. Another problem that the women migrant workers had categorically faced was the non-access to hygiene and sanitation concerning washrooms (Azeez et al., 2020). There was no system of transportation for migrant workers to their native places. That led to a huge outcry, but, it was stated by the Supreme Court that the workers will be identified and transported within 15 days and special trains called “Shramik” trains⁴⁹ were also organized that would aid in the same. But the dangers of hunger, absence of shelter, etc. faced by the workers were extreme and it required swift action. Apart from this, various negative mental health conditions were also underlying this issue. The migrant workers have already suffered from illnesses due to their occupations, susceptibility to new communicable infections, loss of employment and the subsequent debt traps and absence of family support (Jesline et al., 2021).

⁴⁷ Re Problems and Miseries of Migrant Labourers IA No. 51637/2020.

⁴⁸ HCP No. 738/2020. 2020. Available at: https://www.livelaw.in/pdf_upload/pdf_upload-378033.pdf [Accessed 16.02.2023].

⁴⁹ Suo Motu Writ Petition (C) No. 6/2020.

V.7. Shortcomings of Inter-State Migrant Workmen Act and Unorganized Workers' Social Security Act

The ISMA and Social Security Act were the only legislations regarding the migrant labour crisis that could have been instrumental in ensuring that social security was at play adequately. The problem with the Social Security Act though was the inability of boards to direct welfare schemes as it was under various ministries and there was a huge lack of information and resources to the migrant workers. It was a tool for exploitation for the employers and contractors for a very long time and this was done by the heads who used to facilitate the migration of a large number of labourers outside the state and the contractor used to promise them wages, which were ultimately not paid and there used to be no holidays, structure of wages, etc., The migrant labourers were made to work throughout the week in very poor conditions and, thus, a blatant disregard of human rights used to take place. Though, the Compact Committee which was formed out of the 28th Labour Ministers Conference, 1976, led to the enactment of the 1979 Act that allowed employers to employ workers who were skilled but were outside the state and there could be employment opportunities for the workers. The major problem with the implementation of this Act is the non-awareness in the working class who were deprived and they could not fight for their rights as they could not compromise on their livelihood. Thus, it was necessary to recalibrate the social security regime in light of the crisis and fine-tune it.

V.8. Hardships Faced by Migrant Labourers in the Event of Covid-19 Lockdown

There are at least 5 crore inter-state migrants according to 2011 Census, and the majority of them were in the unorganized sector, they are usually daily wagers and do not have access to basic facilities like identity cards, too. A large number of migrants have to move to the big cities for their subsistence in the quest for work. At least 37 % of the population, according to the 2011 Census, are interstate migrant workers and this value includes also those who migrate within the state.

The migrant workers were stalled in the events of lockdown that were imposed in the pandemic as they had come to a state for their work and the borders of the state were shut and they could not go back to their homes. There was a lack of systematic protection for the migrant labourers and the ISMA could not effectively come to the rescue. The major issue is that most of the migrant workers are not even aware of their rights and there is a complete disregard for human rights by the employers and the contractors keep their existence based on hand-to-mouth. In the event of the pandemic, the migrant labourers lost their dignity as they had to walk towards their homes and cover miles, a case in Aurangabad was brought to the notice where migrants halted a railway track and got run over by a goods train.⁵⁰ The state borders were locked and there was a huge disregard of migrant workers' due share. The displacement allowance, basic amenities, health facilities, etc., were not paid to the migrant workers and it led to the poor implementation of the ISMA. Even in the OSH Code, it was stated that the displacement allowance which was equal to 50 % of the monthly wage of the migrant workers, was also legitimate to be paid to them; according to the Committee that was made for the monitoring of this Code, it was put forth that there have to be separate provisions for the upliftment of migrant labourers and their welfare, a helpline needed to be put to work for them, a hostel for the child migrant workers and anti-trafficking mechanisms were also suggested. The universalization of the PDS system was also an issue and hygienic shelter facilities with community life and access to healthcare were also done which needed to be incorporated.

There had to be an efficient regime allowing the migrant workers to reach their homes without hardships that meant an effective transportation system during the Covid times, which was missing on the issue. At least 22 migrant workers⁵¹ died while walking back to their homes, the situation was very grave as there was rampant

⁵⁰ Legal framework relating to migrant workers need to reconfigured in India, 2022. Available at: <https://www.livelaw.in/columns/legal-frame-work-relating-to-migrant-workers-needs-to-be-reconfigured-in-india-16086> [Accessed 09.01.2023].

⁵¹ Twenty-two migrants die while trying to get home during lockdown, 2021. Available at: <https://scroll.in/latest/957570/covid-19-lockdown-man-collapses-dies->

unemployment and a lack of food and shelter. There were instances of help being provided to them in the manner of counselling, etc., but necessities were met with a lot of delay. The PILs lacked a proactive approach to some extent in addressing the issues of migrant labour; the dictum in the *BALCO Employees Union*⁵² case that stated PIL are of the nature to secure justice for poor sections of the society which cannot defend their interests. A glaring issue that was put forth in the court was of *Harsh Mander v. Union of India*⁵³ that at least 11,000 migrant workers were not paid minimum wages even before the lockdown. There were at least 6,800 crores of rupees which were not paid as wages to the migrant workers.⁵⁴ The situation was so dreadful for the migrant workers that there was no shelter and they were struggling to find food. Another report established that at least 96 % of migrant workers did not get rations from the government and almost 90 % did not receive wages during the time of lockdown.⁵⁵

V.9. Re-thinking the Social Security Regime

The Social Security Act had the aim of protecting unorganized workers who are defined as self-employed, home-based and wage workers. Under Section 3 the Central Government works for the life and disability cover for these workers. Although this Act envisages a process of registration of workers, the Boards do not function correctly, as they do not have adequate powers. In *Shramjivi Mahila Samiti v. NCT*,⁵⁶ the Central Government clarified that there has to be a single point of contact for the welfare schemes of unorganized labour

halfway-while-walking-home-300-km-away-from-delhi#:~:text=While%20the%20deaths%20of%20at,and%20shelter%20in%20large%20cities [Accessed 11.01.2023].

⁵² (2002) 2 SCC 333; also reiterated in *PUDR v. Union of India* AIR 1982 SC 1473.

⁵³ WP (C) No. 10801/2020. 2020. Available at: https://www.livelaw.in/pdf_upload/pdf_upload-372004.pdf [Accessed 17.02.2023].

⁵⁴ *Aruna Roy v. Union of India & Anr* WP (C) No. 10846/2020.

⁵⁵ Survey of the migrant labour amidst lockdown, 2021. Available at: <https://www.thehindu.com/data/data-96-migrant-workers-did-not-get-rations-from-the-government-90-did-not-receive-wages-during-lockdown-survey/article31384413.ece> [Accessed 11.01.2023].

⁵⁶ SLP (Crl) No. 150 of 2012. 2020. Available at: https://www.livelaw.in/pdf_upload/pdf_upload-379150.pdf [Accessed 19.02.2023].

which are scattered under the various ministries, but the problem of lack of awareness, incentive, etc. remains. It is difficult for unorganized workers to get their dues. Similarly, a universal healthcare scheme like Rashtriya Swasthya Bima Yojna (RSBY) that could have been proved to be beneficial for domestic workers is marred by a lack of information, professionals to manage it, coverage in rural areas and lack of quality of hospitals. Another problems are the problem of the frequent frauds and the problem of untimely allocation of funds of the government (Banka, 2021).

Even in the Building and Other Construction Workers Act, the Supreme Court issued directions related to the registration of establishments and workers to ensure that the benefits trickle down to the vulnerable sections.⁵⁷ It has also been observed that there is a need for a centralized scheme for education, health, social security and old age or disability benefits to ensure life with dignity, and the practice of collecting cases from employers and using it for personal benefits should be stopped.⁵⁸ The extension of Employees' State Insurance has to be done for the compensation in matters of wage loss. It generally applies to the non-seasonal undertakings that employ at least 10 persons voluntarily, but that limit has to be extended for a better regime of social security. Universalization also needs to be done in that regard. The Social Security Code needs to be more welcoming of the changes and every district must be included in the comprehensive scheme. The gig workers and unorganized sector should also be incorporated in this regard to allow social security benefits that include pension, provident fund, etc. to the workers. A re-skilling of the retrenched employees also needs to be done in that regard, presently the last drawn wages for 15 days are to be utilized by the employer in this domain. There needs to be universalization of minimum wages too, to be applied to migrant workers also.⁵⁹

⁵⁷ National Campaign Committee for Central Legislation on Construction Labour (NCC-CL) v. Union of India 2018 5 SCC 607.

⁵⁸ Dewan Chand Builders and Contractors v. Union of India and Others (2012) 1 SCC 101.

⁵⁹ Proposed Labour Law Changes: Foundation for Global Manufacturing Hub. 2022. Available at: <https://www.livelaw.in/law-firms/articles/proposed-labour-law-changes-foundation-for-global-manufacturing-hub-158150> [Accessed 11.01.2023].

VI. Suggestions and Recommendations

After the study of various issues and concerns of the migrant labour crisis, the following suggestions and recommendations have come to light:

- The Boards under various social security and welfare legislations must be reorganized, and the appropriation of funds should be met with close and stricter enquiry and that needs should be met in a very swift manner.

- The migrant workers, in cases of contingencies like Covid-19, must not be clumsily charged by the authorities and should be provided with necessities free of charge.

- The allowances of displacement and that of journey should be swiftly appropriated to the migrant workers and there should not be any delay in ensuring the same. If they were paid in advance, it would help a lot in making the labour welfare scheme more robust and comprehensive.

- The intermediaries in the legislations like ISMA should be reduced and kept to a bare minimum and there should be an all-inclusive approach for the protection of the interests of migrant workers as such.

- The judiciary should be more conscious of providing facilities to migrant workers during such events as Covid-19 and especially during lockdown; they should be more proactive and effective, and efficacious and speedy justice should be provided to the migrant labourers.

- There is a looming unawareness of the rights of the migrant workers in the case of social security. They should be made more aware of their rights and sensitization programs; the same must be launched along with the effective mechanism of grievance redress by the government in the manner educating the migrant workers about their interests.

VII. Conclusion

It can be stated in conclusion that there have been many states in the country that have pro-actively come out in defense of the rights of migrant workers. However, the efforts remained ineffective as the

actions were not swift enough and the anomalies in the legislations and the systems were not adequately covered. There is a plethora of labour rights for migrant workers' welfare and various labour standards that have been set up by the ILO at the international level and the legislation at the domestic level but there is still no effective address for the human rights of the labourers and the effective contemplation of all the issues of migrant labourers. A more comprehensive approach is required by the policymakers to address the problems of migrant labourers and alleviate their social position. Only then, the social security can be adequately granted to the migrant labourers and ensured more prolifically. The ILO standards for labourers and their welfare provide commendable inputs for the countries of the world to follow, but due to the peculiar social realities of the states, they cannot inculcate them effectively. Thus, it leads to imbalance in the regime as there is uneven protection accorded to migrant workers. We have examined the national and international positions and we can effectively conclude that India should be more inclined to achieve the internationally accepted labour standards. Issues and concerns of the migrant labour crisis should be adequately covered to ensure that the whole regime of labour welfare and social security is ensured and India reaches a zenith in protecting the basic human rights of the migrant workers and that a situation similar to Covid-19 will be better handled in the future.

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Information about the Author

Suhail Khan, Ph.D., Scholar at the Faculty of Law, Jamia Millia Islamia, New Delhi, India

khan.suhail83@gmail.com

ORCID: 0009-0009-2867-9936