

Legal Framework to Protect the Rights of Migrant Workers: A Study with Reference to India

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Abstract

In modern days right to life, freedom of profession and freedom of movement are recognised as a universal fundamental human rights, which are also interrelated and inter connected with each other. Universally, all human beings are equally entitled to enjoy all such rights. Indeed, migrant workers are also part of a human society who are not exceptional to enjoy all such rights. However, due to migration, migrant workers are marginalised and vulnerable groups. Perhaps, migrant workers are poor, illiterate and backward in all means. In this juncture, they have been exploited, discriminated and deprived to enjoy and access all such human rights equally compare to other non-migrant human beings across the globe. After the establishment of ILO and UNO, there are several International Declarations, Covenants and Conventional provisions etc., which are equally applicable to all states across the globe including India to protect the rights of migrant workers. Similarly, in India also Constitutional provisions and legislative measures adopted, but due to failure to implement the above provisions effectively, migrant workers have been facing a lot of problems in inter-state and intra-state migration. Therefore, it is an attempt to know how for the rights of migrant workers have been safeguarded internationally and nationally. For this purpose the researcher has framed the following objectives.

Objectives

The Researcher has framed the following objectives,

- To know the International legal frame work and how it protects the rights of migrant workers.*
- To examine the Indian legal system to protect the rights of migrant workers.*
- To know the causes, modes, problems and challenges of migrant workers.*
- Suitable suggestions to protect the rights of migrant workers.*

Keywords: Migrant Workers, Human Rights, U.N.O, Indian Constitution, Legislations, Problems and Administrative measures

Introduction

Migration is not a new to India, historical reports have shown that people had moved one side to another side in search of work and food, in response to environmental shocks and stresses, to escape religious persecution and political conflicts. Subsequently, after the industrialisation and urbanisation, people of different regions migrated from one place to another in search of work and food to

lead their lives. Besides, modern transport system, modern technology, communications, new economic opportunities have created massive levels of mobility to either inter-state or intra-state level migrations. Perhaps, majority of migrant workers have been involved in informal sectors such as construction, industry and service sectors. In India, it was estimated that 454 million internal migrants were reported¹ and the number of internal migrants is expected to increase 550 million by 2021. National Sample Survey estimates that 28.3 per cent of workers in India are migrants.

Meaning of Migrant Workers

There is no uniform meaning on migrant workers, but anyhow by refereeing conventional and legislative provisions, we can try to understand the meaning as follows;

- The International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, 1990 refers the term “migrant worker” as a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a state of which he or she is not a national.²
- The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 refers “inter-state migrant workman” means any person who is recruited by or through a contractor in one state under an agreement or other arrangement for employment in an establishment in another state, whether with or without the knowledge of the principal employer in relation to such establishment.³

Based on the above provisions, it may be stated that International Conventional provision recognises and protects the rights of migrant workers of one nation to another nation, but it didn't recognise migration within country. On the other hand, Indian legislative provision recognises inter-state migration, but didn't say anything about migrant workers with in a state.

Causes for Migration

There are several causes for the wide spread existence of migrant workers and they are as follows;

- Unemployment, poverty, illiteracy and low wages etc. are the major causes for migration. Illiteracy leads to low wages and unemployment. Unemployment impetus to poverty and poverty leads people to migrate in order to attain a better economic status in life. Besides, caste, landholding size, age, sex, education, family size and composition also play a vital role to the migration. Indeed, majority of migrant workers are working in an unorganised sector of works such as construction work, service sector, metro projects, quarries, mines, highway projects and domestic work etc.

Mode of Migration

The mode of migration may be a temporary, permanent and a seasonal migration also.

International Legal Frame Work to Protect the Rights of Migrant Workers

After the establishment of International Labour Organization (ILO) in 1919, it was adopted several conventions to protect the rights of workers which include migrant workers and the following are some important Conventions to understand the rights of migrant workers;

1 2011 Census report.

2 Art. 2 of the International Convention on Migrant Workers and Members of their Families, 1990.

3 Sec.2 (1) (e) of the Inter-State Migrant Workmen Act, 1979.

Migration for Employment Convention (Revised), 1949 (No.97)⁴

Accordingly, it requires ratifying states to facilitate international migration for employment by establishing and maintaining a free assistance and information services for migrant workers and taking measures against misleading propaganda relating to emigration and immigration. Besides, provisions have been made for medical services, transfer of earnings and savings. Perhaps, states have to apply equal treatment and no less favourable that which applies to their own nationals in respect of employment and occupation, social security, trade union and cultural rights and individual and collective freedoms etc...⁵

Migrant Workers (Supplementary Provisions) Convention, 1975 (No.143)

It provides provisions to combat clandestine and illegal migration. However, it is the general obligation to respect basic human rights of all migrant workers. It extends the scope of equality between legally resident migrant workers and national workers in respect of employment, occupation, social security, trade union and cultural rights, and individual and collective freedom for migrant workers.⁶

Abolition of Forced Labour Convention, 1957 (No.105)

According to this convention, each member of the ILO which ratifies this convention undertakes to take effective measures to secure the immediate and complete abolition of forced and compulsory labour as specified in Art.1 of this Convention.⁷

Worst Forms of Child Labour Convention, 1999 (No.182)

Accordingly, each member state shall take necessary measures to ensure the effective implementation and enforcement of the provisions giving effect to this convention including the provision and application of penal sanctions or as appropriate or other sanctions to prevent child labour.⁸

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No.87)

Under this convention workers and employers shall have the right to establish, join federations or any such organisation, federation or confederation shall have the right to affiliate with international organisations of workers and employers.⁹

Besides the above conventions, Social Security (minimum Standards) Convention, 1952(No.102), Protection of Migrant workers (underdeveloped countries) Recommendations, 1955(No.100), Equality of Treatment (Social Security) Convention, 1982(No.118) and Domestic workers Convention, 2011(No.189) etc., also ensure minimum standards to protect the rights of migrant workers.

Based on the above, it may be stated that after the establishment of ILO, it has adopted several conventional provisions to protect the rights of migrant workers such rights are right to recognition of equality between male and female workers, right to enjoy all human rights, right to trade union, right to social security measures, protection of rights of domestic workers and protection of child rights by abolishing child labour and forced labour.

4 <https://www.ilo.org/dyn/normlex/en/f?p> retrieved on 20-09-2020.

5 Art.6.

6 Art.10.

7 Art.2.

8 Art.7 (1).

9 Art.5

Application Human Rights Provisions to Migrant Workers under the U.N.O

Apart from the ILO provisions, after the establishment of United Nations Organisation, the UNO has adopted several International Declarations, Covenants and Conventions to protect the human rights of all including Migrant Workers also. All human rights provisions such as civil and political rights, economic, social and cultural rights enshrined in the International Human Rights Declarations and Conventions such as Universal Declaration of Human Rights 1948,¹⁰ International Covenant on Civil and Political Rights, 1966,¹¹ and International Covenant on Economic, Socio and Cultural Rights, 1966¹² are equally applicable to all migrant workers to enjoy and access their basic human rights across the globe.

The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990

Besides the above general human rights provisions, the U.N.O, has adopted a separate International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990 and the important provisions of this Convention are as follows;

Application of Conventional Provisions

This International Convention is applicable to all migrant workers and their family members without any kind of distinction based on sex, race, colour, language, religion, political, national, ethnic, nationality, age, economic position, property, marital status, birth or other status.¹³ Similarly, the Convention shall apply during the entire migration process of migrant workers and their families, which include preparation for migration, departure, transit and the entire period of stay and remunerated activity in the state employment as well as return to the state of origin.

Implementation of International Human Rights Provisions

State parties shall require undertaking with the international instruments concerning human rights to respect and ensure to all migrant workers and members of their families with in their territory.¹⁴

Provisions Freely to Leave Any State

Migrant workers and their family members shall be free to leave any state including their state of origin. This right shall not be subject to any restrictions except that are provided by law, which are necessary to protect national security, public order, public health or morals.¹⁵

Right Life

¹⁶All migrant workers and their family members' right to life shall be protected by law.

10 Dr.H.O.Agarwal, Human Rights, p.no.35, Central Law Publications, Sixteenth Edition, Allahabad, 2016.

11 Ibid.p.n.50.

12 Ibid.p.n.52.

13 Art.1 (1) of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990.

14 Art.7 of the Migrant Workers Convention, 1990.

15 Art.8 of the Migrant Workers Convention, 1990.

16 Art.9 of the Migrant Workers Convention, 1990.

Provision to Prevent Torture

No migrant worker or his family members shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.¹⁷

Freedom of Thought and Religion

Migrant workers and their family members shall have the right to freedom of thought, conscience and religion.¹⁸

Right to Property

No migrant worker or his family members shall be arbitrarily deprived of his individual or in association with the others property.¹⁹

Right to Security of Person

Migrant workers and their family members shall be the right to liberty and security of person.²⁰

Right to Equality

Migrant workers and their family members shall have the right to equality with the nationals of the state concerned before the courts and tribunals.²¹

Right against Expulsion

Migrant workers and their family members shall not be subject to measures of elective expulsion and each case of expulsion shall be examined and decided individually.²²

Right to Trade Unions

State parties recognize the right of migrant workers and their family members to take part in meetings and activities of trade unions and of any other associations established in accordance with law.²³

Right to Social Security Measures

All migrant workers and their family members shall enjoy social security in the state of employment as the same treatment granted to nationals by the applicable legislation of that state.²⁴

Right to Health

Migrant workers and their family members shall have the right to receive any medical care that is urgently required for the preservation of their life.²⁵

Right to Nationality

Each child of a migrant worker shall have the right to a name, to registration of birth and to a nationality.²⁶

17 Art.10 of the Migrant Workers Convention, 1990.

18 Art.12of the Migrant Workers Convention, 1990.

19 Art.15of the Migrant Workers Convention, 1990.

20 Art.16of the Migrant Workers Convention, 1990.

21 Art.18 of the Migrant Workers Convention, 1990.

22 Art.22 of the Migrant Workers Convention, 1990.

23 Art.26 (1) (a)of the Migrant Workers Convention, 1990.

24 Art.27.(1)of the Migrant Workers Convention, 1990.

25 Art.28of the Migrant Workers Convention, 1990.

26 Art.29 of the Migrant Workers Convention, 1990.

Right to Education of Child

Each child of a migrant worker shall have the basic right to access to education on the basis of equality of treatment with nationals of the state concerned.²⁷

Right to Employment

Migrant workers shall enjoy equality of treatment with nationals of the state of employment in relation to educational institutions and services, vocational guidance and placement of services, housing, health services, co-operatives and participation in cultural life.²⁸

According to the above provisions, State parties undertake in accordance with the international instruments concerning human rights, to respect and to ensure to all migrant workers and their family members within their jurisdiction. The rights provided in the present convention applicable to all without distinction of any kind such as to sex, race, colour, language, religion, political, national, ethnic, social origin, nationality, age, economic position, property, marital status, birth or other status. Anyhow, the Convention didn't say anything about the protection of rights of migrant workers within the country from one state to another state and migration within the state.

Indian Legal Frame Work to Protect the Rights of Migrant Workers

In India, after the promulgation of the Indian Constitution, the Constitution guarantees some fundamental rights to the migrant workers. Besides, a separate Legislative measures also ensure to protect their rights. They are as follows,

Constitutional Provisions to Protect the Rights of Migrant Workers

The Indian Constitution provides overarching frame work for regulation of conditions of work as well as protection and promotion of livelihood of migrant labour under chapter III in the means of Fundamental Rights and Chapter IV in the mode of Directive Principles of State Policy. The Fundamental Rights guaranteed by the Constitution provides equality and equal opportunities as mentioned below,

- Art.14 declares that the state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.²⁹
- Art.15 declares no discrimination on grounds of Religion, Race and Caste, etc..., but this guarantee is available to citizens only.³⁰
- Art.16 guarantees equality of opportunity for all citizens in matters of Public Employment.³¹
- Art.19 (1) (b) guarantees to all citizens of India right to assemble peaceably and without arms, but state may impose reasonable restrictions under Clause3 of Art.19.³²
- The Constitution guarantees to all its citizens the right to form an association or unions.³³
- Art. 19 (1) (d) guarantees to all its citizens the right to move freely throughout the territory of India.³⁴
- Art.19 (1) (e) guarantees to all its citizens the right to reside and settle in any part of the territory of India.³⁵

27 Art.30 of the Migrant Workers Convention, 1990.

28 Art.43(1)of the Migrant Workers Convention, 1990.

29 Dr.J.N.Pandey, Constituional Law of India, p.no.83, Central Law Agency, Fifty Fourth Edition, Allahabad, 2017.

30 Ibid.p.no.142.

31 Ibid.p.no.157.

32 Ibid.p.no.226.

33 Art.19 (1) (c)

34 Supra note.32, p.no.230.

35 Ibid.p.no.232.

- Art.19 (1) (g) guarantees to all its citizens the right to practise any profession, or to carry on any occupation, trade or business.³⁶
- The Constitution guarantees that no person shall be deprived of his life or personal liberty except according to procedure established by law.³⁷
- Art.23 prohibits traffic in human being and begar and other similar forms of forced labour.³⁸
- Art.24 says that prohibition of employment of children in factories.³⁹
- Art.25 guarantees to every person the freedom of conscience and the right to practise and propagate religion,⁴⁰ etc.. are important fundamental rights to protect the basic human rights of migrant workers in India. In case of violation of the fundamental rights guaranteed by the Constitution, migrant workers can seek protection by filing writs and PIL through courts of law under the provisions of Art. 226 before the High Courts and Art. 32 before the Supreme Court.⁴¹

Support of Directive Principles of State Policy to Migrant Workers

The Constitution directs the state to take positive measures on the below mentioned matters. Accordingly, Art.38 says that state to secure social order for the promotion of welfare of the people. Art.39 (d) states that there is equal pay for equal work for both men and women, Art. 39(e) state shall ensure the health and strength of worker, men and women, and the tender age of children, Art. 41 provides right to work, education and public assistance in certain cases. Further, Art.42, directs the state shall make provision for securing just and human conditions of work and for maternity benefits. Art. 43, directs the state shall endeavour to secure by suitable legislation or economic organisation to provide all workers living wages and decent standard of life. Art.47 says that it is the duty of the state to raise the nutrition level and the standard of living and to improve public health.⁴²

Legislative Provisions to Protect the Rights of Migrant Workers

Apart from the above Constitutional provisions, the Government of India enacted a separate legislation in the name of the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Services) Act, 1979. The important provisions of this Act as follows;

Application of the Act

This Act is applicable to every establishment in which five or more inter-state migrant workmen (whether or not in addition to other workmen) are employed on any day of the preceding twelve months.⁴³ Besides the above provision, the act is applicable to every contractor who employs five or more inter-state migrant workmen (whether or not in addition to other workmen) are employed on any day of the preceding twelve months.⁴⁴

36 Ibid.p.no.233.

37 Art.21

38 Supra note. 36, p.no.365.

39 Ibid.p.no.367.

40 Ibid.p.no.373.

41 Mahendra.P.Singh, V.N.Shkla's Constitution of India, Eastern book Company, Tenth Edition revised, Lucknow, 2006,

42 P.M.Bakshi, The Constitution of India, Universal Law Publishing Co, Ninth Edition, New Delhi, 2009.

43 Section 1(4) (a) of the ISMWA,1979.

44 Section 1(4) (b) of the ISMWA,1979.

Registration of Certain Establishments

Every principal employer of an establishment to which this Act applies shall within such period as the appropriate Government by notification in the official Gazette fix in this behalf with respect to establishment make an application to the registering officer in such a form and manner and on payment of such fees as may be prescribed.⁴⁵

After the receipt of an application within one month, if the application completes in all respects, the Registering officer register the establishment and issue certificate of registration to the principal employer in the prescribed form.⁴⁶ If the application is not so complete, return the application to the principal employer of the establishment.⁴⁷

Revocation of Registration

If the registration of any establishment has been obtained by misrepresentation or suppression of any material fact or for any other reason, the registration has become useless or ineffective, the registering officer after giving an opportunity to be heard to the principal employer and with the previous approval of the appropriate Government, revoke by order in writing the registration and communicate the order to the principal employer.⁴⁸

Prohibition against Employment without Registration

No principal employer of an establishment to which this act applies shall employ inter-state migrant workmen in the establishment unless a certificate of registration in respect of such establishment issued.

Licensing of Contractors

Every contractor has to get licence from the licensing officer appointed by the appropriate government to employ workmen for the execution of any work in any establishment in any state, persons from another state.⁴⁹

Wages to Migrant Workmen

The migrant workers shall in no case be paid less than the wages fixed under the Minimum Wages Act, 1948.⁵⁰

Other Facilities

It is the duty of every contractor to ensure equal pay for equal work, suitable conditions of work, to provide suitable residential accommodation, medical facilities, safety measures and protective clothing etc..⁵¹

Based on the above discussion, the researcher has found that this legislation didn't say anything about migrant workers within the state and states have taken steps to implement this legislation but not succeeded to protect their rights effectively. We knew very well what kind of problems faced by the migrant workers during the Covid-19 situation across the country.

45 Section 4 (1) of the ISMWA, 1979.

46 Section 4 (2) (a) of the ISMWA, 1979.

47 Section 4 (2) (b) of the ISMWA, 1979.

48 Section 5 of the ISMWA, 1979.

49 Section 8 of the ISMWA, 1979.

50 Section 13 of the ISMWA, 1979.

51 Section 16 of the ISMWA, 1979.

New Labour Codes-2020

However, it is important to note that now the Government of India has repealed all the previous labour legislations including Inter-State Migrant Workmen legislation, 1979 by framing new labour codes and as follows;

- The Code on Wages, 2019.
- The Industrial Relations Code, 2020.
- The Occupational Safety, Health and Working Conditions Code, 2020.
- The Code on Social Security, 2020 etc., enacted by the Parliament, but which are yet not implemented by the Government of India.

Challenges

1. Due to lack of registration of employment by employers or licence by Contractors, it is extremely difficult in tracing the migrant workers and their exact number.
2. Exploitation of migrant workers by giving low wages, unequal wages between male and female for the same nature of work, sometimes they require to work below subsistence levels and reside in inhuman conditions.
3. Lack of organisation to voice their grievances. Almost all migrant workers have involved in unorganised labour and they have no proper organisations to protect their Constitutional and labour legislative rights.
4. Inability to cope with the diversity of culture, language and access to identity of documentation.
5. Application of labour laws to migrant works is a myth. For instances no minimum wages, no compensatory laws, no security to their tenure of work, no maternity benefits, no provident facilities and pension plans and no crèches facilities to their children.
6. Lack of exact data on migrant workers, because neither central government nor state governments maintain records about migrant numbers data and to implement various programmes effectively.
7. Depriving of right to vote due to migration.

Problems of Migrant Workers

Even though there are several International and National legal provisions provided to migrant workers, they have been facing a lot of problems. Due to poverty and low wages, they live in unhygienic and hazardous environmental areas and facing bundle of problems as mentioned below;

Lack of Proper Basic Facilities

They live in parks, pavements, slums and open areas which deprive basic amenities such as water, drainage, light and lead to several health problems like respiratory, kidney, lungs disorders, and spread of communicable diseases.

Health Problems

Due to poverty and backwardness, they are unable to access medical facilities for their health problems.

Child Labour

Generally, whenever parents are being migrated, children also migrate with their families resulting in child labour automatically. They are often engaged in occupations which are as dangerous as those in which the adults are engaged. Children of migrant families have deprived of the free educational facilities and children are exposed to health problems. Mal-nutrition and under-nutrition are common problems among migrant children.

Lack of Safety and Security

Migrant workers are new to the migrant area, where they feel uncomfortable, local people may use domination, exploitation and violence. Therefore, they have lack of safety and security in their lives. Accidents and deaths are common at the work place of construction sector and fire accidents in industrial sector which is aggravated by the absence of any kind of social protection to them.

Violence against Women

Female migrant workers face several gender based discrimination at work place relating to wages and leave. With the result of establishment of super marketing agencies, women from migration face a lot of violence includes physical and sexual violence.

Suggestions

The researcher has made the following suggestions to protect the rights of migrant workers,

- A separate International Convention shall be made to protect and monitor the rights of Inter-State migrant workers by state parties. At present International Conventional Provisions protect the rights of International migrant workers (migrant workers between one country to another country) and no provisions provided in the Convention for Inter-State migrant workers within the Country and intra-state migrant workers.
- A separate provision shall be made by Appropriate Governments in India to recognise and protect the rights of intra-state (within the state) migrant workers in addition to Inter-State migrant workers in India.
- Appropriate Governments shall make provisions for the compulsory registration of the employment by employers or compulsory licence by Contractors who engage migrant workers, if not provisions shall be made to impose fine and punishments against them.
- Appropriate Governments shall take Steps to register migrant workers and issue identity cards through labour welfare departments at Taluk and District level, because employers are not registering their employments and not issuing ID cards to migrant workers.
- Appropriate steps shall be taken to apply all labour laws to migrant workers in case of minimum wages, payment of wages, workmen compensation, and social security schemes such as provident fund, gratuity, maternity provisions and pension facilities shall be provided to migrant workers.
- Suitable nationwide medical and healthcare facilities shall be provided through insurance schemes without the restriction of locality to access health care facilities to them.
- Appropriate steps shall be taken to provide nationwide availability of ration facilities to get food commodities at employment places to access food facilities.
- Suitable steps for nationwide voting facility shall be provided to cast their right to vote at their employment place.
- Priority shall be given to access housing facilities and free housing schemes to migrant workers.
- Trade Union shall play active and vital role to protect the rights of migrant workers particularly in an unorganised sector.
- NGOs also should strive to protect the rights of migrant workers.

Conclusion

Based on the above discussion, it is sated that international legal frame work is inadequate to protect the rights of Inter-State migrant workers within the country and ultimately in several countries Inter-State migrant workers have been facing a lot of problems. In India, the Constitutional fundamental rights guaranteed in part-III are equally applicable to migrant workers, however due to illiteracy and poverty; they are unable to protect their rights. Now, the Government of

India repealed the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Services) Act, 1979, by framing new Labour Legislation Codes 2019 and 2020, which are yet not implemented. As per the previous legislation is concerned which was not properly implemented by the states in India.