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MIGRATION IN INDIA



Chief Editor

Prof. Virag S. Gawande

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Prof. Meghavee G. Meshram

Prof. Naresh W. Patil



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Human rights of Migrants: National & International Perspective

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Abstract

Human rights are the most essential things for the migrants to justify their rights in those countries where they stay as aliens. Migrants are after all human beings and they should be regarded as human beings having rights in any part of the world. A migrant's human rights are largely defined by the migration category to which he or she belongs and by the reasons underlying that migration. Migrants are not generally people who legally migrant, but refugees are also migrants.

Migrant's human rights should be the responsibilities and obligations of governments and other actors regarding migration. Finally, this article states that the socio-economic, political and legal issues of migration and management of these types of migrants in relation to their human rights at the regional, national and international level.

Introduction:

Migration has been a significant part of human history as it has shaped societies and economies due to the intermixing of different cultures, movement for economic and financial purposes has gained immense popularity over the past few decades, millions travel from developing to developed countries in the pursuit of economic advantages and better quality of life various issues have propped up over the years regarding labour rights for migrant workers were exposed to exploitation. Thus, government across the world have realized the importance of recognizing labour rights as a part of human rights.

Across the world, the violation of labour rights by employer companies is a grave concern. Migrant workers are especially vulnerable due to the fact that they lack social security along with economic freedom. There are certain risks involved when such workers are rendered unemployed. The present article attempts to venture into the Indian legal standards governing the rights of migrant workers and international policy suggests regarding the same.³⁵

Herman Cohen, Jewish Philosopher, while commenting in the 19th century on the Bible, said: "The alien was to be protected, not because he was a member of one's family, clan or religious community; but because he was a human being. In the alien, therefore, man discovered the idea of humanity".³⁶ This quotation implies that human rights are just that- human rights, it does not discriminate between citizens and non-citizens. The people who generally migrate from country to country or region to region are, first of all, human beings.

It is a matter of concern that international migration is increasingly becoming a major topic in the developed and developing countries. It alarms about the need to establish on order to promote human rights and migrant's rights issues. The accelerating rate and the concerning impact of the international migration on origin, destination and transit countries, is a noteworthy phenomenon which will still continue further in the coming decades.

Definition of Migrant Workers:

A migrant worker has been defined under Article 2 of the Convention as a person who is to be engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.

³⁵ Blog-ipleaders-in.cdn.ampproject.org.

³⁶ H. Freedman, ed., Jeremiah, Hebrew Text & English



The expression 'members of the family' has also been defined under Article 4as person married to migrant workers or having with them a relationship that, according to applicable law, produces effects equivalent to marriage, as well as their dependent children and other dependent persons who are recognized as members of the family by applicable legislation or applicable bilateral or multilateral agreements between the States concerned.³⁷

Kinds of Migrants:

There are different kinds of migrants which maybe be discussed in the following way:

1. Emigrant: The migrants who leave their country of residence to live in another country. It is a part of international migration.,
2. Immigrant: The migrants who live inf a new country.
3. Chained Migrant: When a migrant is allowed to immigrate by a foreign country because his adult relative has a citizenship.
4. Forced Migrant: A migrant who is forced to leave his domicile because of any reason i.e. push or pull. And has to live in a new place.
5. Internal and External Migration: Moving within a State, country i.e. Internal migration. Moving to a different State, country i.e. External migration.³⁸

Objectives:

- To help migrants make informed positive choices through the provision of information, guidance and support.
- Improve access to justice through signposting and referrals to legal/immigration services and casework support.
- Provide advocacy support for migrants especially for the most vulnerable to ensure their rights are protected.
- Facilitate access to mainstream provision including healthcare employment etc.
- Reduce the effects of poverty, destitution and social exclusion among vulnerable migrants by support access to provision and humanitarian assistance.
- Raise awareness and develop understanding of migration issues so as to build a society where services are knowledgeable and competent in meeting the needs of migrants.³⁹

Hypothesis:

1. Problem of migrants is new one and it is not shown concerned by competitive authorities.
2. Independent legislative protection is required to cope up migrants' problems.
3. Role of judiciary in the area of migrant's problem need to show more concern.

Background:

1. Help workers and make informed choices.
2. Protect human rights and workers rights at source and destination.
3. Protect workers against exploitation to prevent them form getting into forced labour or human trafficking.
4. Reduce costs of labour migration.
5. Regulate placement agencies and agents.
6. Integrate migrants in the development agenda of States.
7. Build positive public perception of migrants.

³⁷ Article 2 & 4 of the International convention on the protection of the Rights of all migrant Workers & Members of their families.

³⁸ Human Rights of Migrants: issues & Perspectives.

³⁹ <https://migrantaction.org.uk>.

**Rights of Migrants at Domestic level:**

With every migrant India also moves, as greater mobility is a prerequisite for maintaining the country's pluralistic traditions millions of people move from to and within India, but while dealing with these migrants the human attribute goes missing. However, India has numerous laws and constitutional provisions related to labour and migrant rights. The fundamental rights available to the migrants are exhibited in Indian constitution. Article 14 which holds that everyone is equal before the law. Article 15 prohibits the State from discriminating against citizens. Article 16 confers the right of equal opportunity for employment under a State. Article 19(1) (c) confers the right to form association and unions. Article 21 guarantees protection to life and personal liberty. Article 21A provides for free and compulsory education to all children in 6-14 age group. Article 23 prohibits all sorts of trafficking and forced labour. Article 24 prohibits child labour and makes it illegal to employ a child under 14 in a factory, mine, or any hazardous work. Article 38(1) directs the State to strive to Promote the Welfare of the People by securing and Protecting Social order for the promotion of the welfare of the people. Article 38(2) directs the State to strive to minimize income inequalities in the country. Article 39(d) provides that the State should strive to ensure equal pay for equal work for both men and women. Article 41 directs the States to strive to ensure the right to work for it's citizens which was attempted to put into practice through the introduction of "Mahatma Gandhi National Rural Employment Guarantee Act- 2005. Article 42 directs the State to work for providing secure, just and humane working conditions and for maternity Assuagement Article 43A directs the State to work on legislation that would secure the participation of workers in the management of undertakings, establishments or other organizations engaged in any industry.

Apart from the provisions laid down in the Indian Constitution, there are also laws meant to protect the interest of Indian migrant workers of which one is the Inter-State Migrant Workmen Act 1979. This Act was amended in 2017 and now it is known as the Inter-state Migrant Workmen Central Rules, 2017. The other important Indian laws meant to protect the interest of workers are Trade Union Act- 1926, Payment of Wages Act-1936, Industrial Dispute Act 1947, Minimum Wages Act-1948, Payment of Bonus Act-1965, Equal Remuneration Act-1976, unorganized Workers Social Security Act-2008 etc. India is a founding member of ILO and Since 1922, it has been a permanent member of this world body.⁴⁰

Human Rights of the Migrants under International level:

Human rights, as they are guaranteed in both national and international law, have an essential role in protecting migrants caught up in these powerful forces. The Global Migration Group recently recalled that the "Fundamental rights of all persons, regardless of their migration status.

A number, of rights have been provided to all migrant workers and members of their families which include the following:

1. They shall be free to leave any State, including their State of origin, without restrictions (Article 8, para 1) and the right to enter and remain in their State of origin (Article 8 Para 2).
2. Protection of the right to life under the law (Article 9).
3. Prevention form subjection to torture or to cruel, inhuman or degrading treatment or punishment (Article 10)
4. Forbidding of slavery or servitude (Article 11 Para 1).
5. Forbidding of forced or compulsory labour (Article 11, Para 2).
6. Right to freedom of thought, conscience and religion (Article 12).
7. Right to hold opinions without interference and right to freedom of expression (Article 13).
8. Protection from arbitrary or unlawful interference, with his or her privacy, family, home, correspondence (Article 14).

⁴⁰ <https://www.sciencedirect.com>.



9. Protection from arbitrary deprivation of property (Article 15).
10. Right to liberty and security of person (Article 16).
11. Protection against violence, physical injury, threats or intimidation whether by public officials or by private individuals (article 16, Para 2).
12. Protection from arbitrary arrest or detention (Article 16, Para 4).
13. Information regarding legal rights while under arrest or detention (Article 16, Para 5) or committed to prison or custody pending trial (Article 16, Para 7).
14. Right to equality with nationals of the State concerned before the courts and tribunals (Article 18).
15. No migrant worker or members of his or her family shall be imprisoned merely on the ground of failure to fulfil contractual obligation (Article 20).
16. Each case of expulsion must be examined and decided individually collective expulsion of workers has been declared illegal (Article 22).⁴¹

At present the recognition of human rights for the migrants in increasing due to new development of International law, collection of new data, reasonable interpretation of existing national and international law, and new mechanism of reporting United Nations' International Convention on the Protection of the Rights of All Migrant Workers and their Families is the most recent international document that clearly deals with migrant's rights regardless of their legal status.⁴²

Role of Judiciary towards Migrants:

The Supreme Court of India is considered to be the guardian of the Constitution of India. Article 32 makes the Supreme Court the savior of the people whose Fundamental rights are being violated. It is considered a duty of the Supreme Court of India to uphold the values of the constitution. The intervention of the Supreme Court was sought through Public Interest litigations brought before it concerning several issues relating to migrant workers.

However, the response of the supreme court of India was very passive and insensitive in case of PIL which were filed regarding the migrant workers crisis. The obliviousness of the SC.

Of India became obvious when it took suo moto cognizance of the migrant workers crisis and passed a direction saying that no train or bus fare shall be charged for migrant workers, after disposing of a IOL filed by **Jagdeep Chokker**, solely on the basis of the version of the executive that all necessary steps are being taken by the center and the States.

In 1983, the SC. Itself, in **Bandhua Mukti Morcha v/s. Union of India**,⁴³ said that, "When the poor come before the court, particularly for enforcement of their fundamental rights, it is necessary to depart from the adversarial procedure and to evolve a new procedure which will make it possible for the poor and the weak to bring the necessary material before the court for the purpose of securing enforcement of their fundamental rights.

The judiciary should have intervened in the early days of lockdown as the supreme court has the power to scrutinize the executive actions and inactions towards the people.⁴⁴

Suggestions:

1. First, the working of the construction workers welfare Board (CWWB) must be reoriented in each State.
2. The migrants should not be charged by the government for food and train fare.
3. Migrant workers need to be sensitized about their rights. The government needs to take initiatives with regard to grievance redressal mechanism and educate the workers as to why the grievance redressal mechanism exists.

⁴¹ Human Rights: Dr. H.O. Agrawal P. 138.

⁴² Human Rights of Migrants: Issues and perspective p. 09.

⁴³ AIR (1997) 10 SCC 549.

⁴⁴ <https://www.groundxero.in>.



Conclusion:

It can be said that most States despite their efforts have remained ineffective in regulating the movement of migrant workers and also screening them properly. Even after the existence of a plethora of legislation and labour standards at the national and international level, there still remains a wide gap between basic human rights of labourers and the legal framework governing their rights. Policymakers need to take a practical approach towards the protection of the rights of the migrant labourers as their social situation is already difficult. It is a well-observed fact that most countries have taken a lackadaisical approach towards the ILO standards for migrant workers. Ostensibly countries are supposed to incorporate legislative frameworks in accordance with the ILO standards, however, most have failed to do so. The labour laws in India still have a long way to go.

Reference

¹ Article 2 & 4 of the International convention on the protection of the Rights of all migrant Workers & Members of their families.

¹ Human Rights of Migrants: issues & Perspectives.

¹ <https://migrantaction.org.uk>.

¹ <https://www.sciencedirect.com>.

¹ Human Rights: Dr. H.O. Agrawal P. 138.

¹ Human Rights of Migrants: Issues and perspective p. 09.

¹ AIR (1997) 10 SCC 549.

¹ <https://www.groundxero.in>.