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## Failure of Inter State Migrant Worker Act, 1979 in the current times of COVID-19 & Plight of Migrant Workers

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### Abstract

In India, the COVID-19 pandemic has exposed the prevailing concerns of inequality, communalism and other difficulties with the country's political and social structures.

ISMW Act 1979, is an act of the Parliament of India enacted to regulate the condition of service of interstate labourer in Indian labour law. The purpose of the Act is to protect workers who are working outside their native states in India.

Unorganised Workers' Social Security Act 2008 is an Act of the Parliament of India enacted to provide for the social security and welfare of the unorganised workers (meaning home-based workers, self-employed workers or daily-wage workers).

Lockdown measures in the country among many other things have led to the sudden displacement of migrant workers from large urban and sub urban cities<sup>1</sup>. Many issues faced by the migrant population of the country could have been avoided had there been proper implementation of the labour laws of our country.

### Keywords

Refugee Crisis in India, Impact of Covid-19 on labor population, Internal Migration & the legal issues involved.

<sup>1</sup>India's treatment of Muslims and migrants puts lives at risk during COVID-19 available on <https://theconversation.com/indias-treatment-of-muslims-and-migrants-puts-lives-at-risk-during-covid-19-136940> (last visited 22 May, 2020)

## Introduction

For years, millions of workers have moved from state to state and some to shores abroad, looking for better opportunities and livelihoods. The international scope of this pandemic has ensured that no section of population is left unaffected. The scale of the issue may vary from state to state or city to city, but none is left untouched<sup>2</sup>. Socio political conditions in India were already unstable prior to COVID-19 and the government has been badly ill-equipped to deal with such immense public health crisis.

Lakhs of daily-wage migrant workers suddenly found themselves without jobs or any other source of income when India announced a lockdown on 24 March which has been extending after every deadline.

Overnight, the cities these people had helped build and run seemed to have turned their backs on them, the trains and buses which should have carried them home suspended.

With their savings running out, no work on their hand and no one to listen to their grievance's men, women and children were forced to begin their most painful journeys back to their villages - cycling or hitching rides on tuk-tuks, lorries, water tankers and milk vans.

For many, walking was the only option. Some travelled for a few hundred kilometers, while others covered more than a thousand to go home. They could be seen everywhere walking under the scorching sun. They weren't always alone - some had young children and others had pregnant wives, and the life they had built for themselves packed into their small bags.<sup>3</sup> The stories are so horrific with women delivering babies on train, people getting hit by truck on their way back home and with meager food been given to them. Even when these train were run by the government; it was not easy for them to book their tickets. Failing to book the tickets multiple times, they had to book them through agents for price thrice the price of original ticket. If only proper data about the number of migrant workers, their average monthly income, their family size was made available the measures taken by the government for their benefit and support could have brought forward positive results and the situation would not have gone south.<sup>4</sup> The issues faced by the the labors in the time of lockdown and their migration could have been better managed if not avoided. At times like this the labour laws of the country which were made to help the people have failed drastically due to many inadequacies and improper enforcement.

It is in this context that we need to revisit the Inter-State Migrant Workmen Act, 1979. It was drawn up after repealing The Orissa Dadan Labour Act, 1975. Based on a very specific background, it couldn't perhaps see much beyond the

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<sup>2</sup> **The internal and external migrants, together, pose a refugee crisis that India is ill-prepared for available on** <https://qz.com/india/1858209/covid-19-lockdown-exposes-indias-looming-migrant-refugee-crisis/> (last visited 20 May,2020)

<sup>3</sup> **Coronavirus lockdown: The Indian migrants dying to get home** available on <https://www.bbc.com/news/world-asia-india-52672764> (last visited on 23 May,2020)

<sup>4</sup> **Migrants and governments: A Covid-19 story of mismatch available on** <https://www.indiatoday.in/news-analysis/story/migrants-and-governments-a-covid-19-story-of-mismatch-1676753-2020-05-11> (last visited on 22 May,2020)

then-existing migrant workmen system. The ISMW Act defines inter-State migrant workman as any person who is recruited by or through a contractor. This definition keeps away any migrant workman out of the ambit if he is not brought in through a licensed contractor.

It is common knowledge that most of the migrant workmen are not routed through licensed contractors. This small catch, in the definition, has been enough to exclude bulk of the migrant workmen from getting any benefit out of the Act.

Furthermore, the Act is only applicable to any establishment in which five or more inter-State migrant workmen are employed. Only a small proportion of migrant workmen are placed under such establishments these days. So, if the establishment doesn't come under the purview of the Act, its migrant employees, numbering less than five, cease to be migrants, legally, even though they may be one.

The existing Unorganised Workers' Social Security Act of 2008, which was to provide social security to them, seems to be in cold storage with very few States implementing it in a meaningful manner. Instead of merging all Acts and schemes to make one comprehensive general law, the Act has merely become one more among the shattered Acts.

It confers no rights and is only an enabling law. It does not define the term 'social security'. Nor does it cover all unorganised workers or make their registration compulsory as in other countries.

### **Statement of Problem**

The study is going to show how ill prepared we are as a country to deal with any kind of contingency. The financial package announced by finance minister Nirmala Sitharaman had not much in store for migrant labors, except an unworkable policy for construction workers. Measures like providing ration to those without ration cards or to open community kitchens under the National Food Security Act were ignored by the authorities.

If all the States had implemented the ISMW Act 1979 faithfully, they would have had full data on immigrant workers regarding their home State and other particulars. If this crucial piece of information had been made available, the mass migration that followed the lockdown if not avoided at least could have been better managed.

These people have worked so hard carrying the burden of economy on their shoulder. They migrated to metro cities or abroad in search of opportunities & livelihood. One contingency shatter down all of it. Ample amount of labor laws & policies enacted throughout the time are of no help to them. Government has no structure, no plan to help them out. They are left stranded in between all the politics of pandemic taking communal turn. They can't stay in the city because they are daily paid, or their savings have run out. Public transport is suspended, so they have no means to go back. We can only imagine their plight when they decided to walk on foot for thousands of kilometers to reach their native places. We have law, policies and new schemes from the side of the government, but all of these have failed drastically to handle the migrant issue at hand.

## Purpose of the study

The study specifically seeks to

- 1) Ascertain the need for legal safeguards and welfare measures for migrants which has become even more pressing and urgent than before.
- 2) Determine a pathway to migrant's rehabilitation, re-migration, and reintegration—the last one because some people might have lost everything in the crisis.
- 3) To ensure a better legal framework which doesn't leave the migrants with nothing yet again during deep water.

## Objectives of the study

- 1) To identify reliefs regarding a composite plan for rehabilitation of aggrieved workers, such as free transportation, one month statutory wage to each migrant, one month free ration, after the lockdown was over.<sup>5</sup>
- 2) To establish setting up of a "Migrant Laborer Crisis Management Board" for the supervision and monitoring of the welfare measures to avoid such crisis in the future.
- 3) To propose a 24-Hour Multi-Lingual Call Centre as a pivotal point for providing accurate information and effective grievance for redressal to migrant workers in a crisis situation in future.

## Research Methodology

The research paper mainly comprises of doctrinal research. It focuses on both primary (statutes, official reports etc) as well as secondary sources (books, articles, journals, websites etc.) while bringing out all the aspects involved in the issue of migrant labor crisis. After discussing the current scenario, the paper will limit itself to the issue of migrant crisis with special reference to The Unorganised Workers Social Security (UWSS) Act, 2008 & Inter-State Migrant Workmen Act, 1979. The paper ends with suggesting some reforms and changes which can help reduce the problems of migratory labor.

## Discussions & Analysis

The current situation puts into question the very efficacy of the Interstate Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 (ISMW) and the role of the Chief Labour Commissioner (CLC) in its enforcing. The Act failed to live up to its intended purposes. Was the CLC's office consulted when the lockdown was planned, and did the CLC provide adequate data required in planning for the lockdown? The exodus of migrant workers in the millions from urban areas could have been better managed, had the The Interstate Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 been implemented in its entirety. Along with the

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<sup>5</sup> Chaudhary, Nilashish. "Plea in SC For Rehabilitation Measures For Migrant Workers After Lockdown." Available on <https://www.livelaw.in/top-stories/plea-in-sc-for-rehabilitation-measures-for-migrant-workers-after-lockdown-154866?infinitemscroll=1> (last visited on 23 May,2020)

ISMW Act there are also other provisions such as the Minimum Wages Act, 1948, the Contract Labour (Regulation and Abolition) Act, 1970, the Equal Remuneration Act, 1976, and the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996. If one looks at the recent plight of the migrant worker, it is evident that such provisions have proved to be inadequate to address the issues of migrant labourers.

### **Shortcomings of Act**

The current crisis has comprehensively exposed the inadequacy of the ISMW Act. The need for legal safeguards and welfare measures for migrants has become even more compelling and vital.

UWSS Act, 2008<sup>6</sup> was enacted to provide for social security and welfare of unorganised workers. The Act defines unorganised workers as home-based worker, self-employed worker or wage worker in the unorganised sector.

The Government of India has, in the recent past, introduced several social security schemes. Pradhan Mantri Shram Yogi Maan-dhan Yojana is meant to ensure old age protection for unorganised workers. Atal Pension Yojana has been launched under the National Pension System. Pradhan Mantri Jeevan Jyoti Bima Yojana is a life insurance scheme. Pradhan Mantri Suraksha Bima Yojana is an accident insurance scheme. Pradhan Mantri Jan Arogya Yojana aims at providing health cover. The UWSS Act<sup>7</sup> itself has two very useful features (a) Registration of unorganised workers, and (b) Portable smart I-card with a Unique Worker's Identification Number.

Repealing of the ISMW Act, 1979 forthwith and replacing it with a new Act, or alternatively, enlarging the scope of UWSS Act to include legal entitlements, to define the migrant workman as a subset, to provide for contingencies of livelihood loss and to make the Act legally enforceable.

Schemes like MNREGA, PDS and Ujjwala need to be made portable. Geofencing of different benefits can be done so that a migrant workman can choose location-wise benefits for himself and his family from a matrix available.

A comprehensive database of the migrant worker's source and destination, demography, employment patterns and skill sets would not only help in skill development and providing for social security benefits but would also be useful in planning for mass transit of migrant labour and preparing for any contingency plan in times like this.

Issues related to migrant workmen have complex Centre-State and inter-State dimensions. The Inter-State Council, set up under Article 263 of the Constitution, may be a more appropriate forum to effectively and comprehensively deal with larger issues related to migrant workmen.

It's time to initiate a legal lattice that means business to the migrant workmen and say goodbye to the antiquated law of 1979 that seems to have outlived its utility. It is better late than never.

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<sup>6</sup> The Unorganised Workers Social Security Act, 2008

<sup>7</sup> ibid

## Conclusions

What we can conclude from the above discussion is that there has been haphazard planning when it came to the issues of internal migrants. The major decisions of the government affected them far more adversely when compared with other classes of workers. Socio Economic laws, policies and schemes of the government still have miles to go before the social and economic safety net of India's migrant workforce improves. This needs wider cooperation and collaboration between States and Centre & States. This nationwide lockdown has reiterated the fact that it is important to strengthen federal structures of our country.

The Smart Cities Mission, one of the most ambitious projects of the Central government, has attracted large numbers of migrant workers. The current migrant crisis has indicated how migrant workers are excluded from the safety nets of both receiving and sending States. We have to ensure their rights, both at the source and the destination States.

The current crisis has demonstrated the lack of proper implementation, and thus the ineffectiveness, of the ISMW Act. Most importantly, the lack of political will is the most serious problem to uphold migrant rights.

During an emergency such as this, if the sending States are equipped with the complete data of migrant workers, they will be able to negotiate better with the receiving States.

It is time to bring the migrant population in the social and economic map of India and for policymakers to include migrants in their decision-making<sup>8</sup>.

## Recommendations

### Social protection

States must (i) establish the Unorganised Workers Social Security Boards; (ii) institute simple and effective modes for workers to register, including self-registration processes, e.g., through mobile SMS

### Food security

One of the major benefits that migrants, especially short-term migrants or migrants who move without their household, lose is access to the public distribution system (PDS). This is a major lacuna, given the rights conferred under the National Food Security Act 2013. The digitization of beneficiary lists and/or in some instances their linkage with Aadhaar for portability of PDS benefits.

The relief money contributed to various relief funds is not only for ventilators. People also die when they have nothing to eat. Nobody should go without a proper meal because they had no work.

### Skilling and employment

<sup>8</sup> **The way forward on migrant issues available on** <https://frontline.thehindu.com/cover-story/article31516414.ece> (last visited 19 May,2020)

If people want to re-migrate, they need upgraded skills. The Skill India project can be helpful there. The various Ministries of the Government of India need to ensure that skill programmes funded by the Union Budget support do not have domicile restrictions.

### Financial Aid

They should be included in the various social security schemes of government providing financial aid. Need of the hour is to frame policies providing better unemployment benefits to ensure economic security for distressed and stranded migrants. This measure will contribute much towards treating migrant workers with more respect and dignity.

Among the State Governments, the Kerala model of humane treatment accorded to migrants, who are referred to as “guest workers”, has been widely appreciated. The Kerala government several relief camps for migrant workers. Moreover, in Kerala, community kitchens are functioning at the panchayat level to ensure that proper food is being made available to migrant worker. Meanwhile, the State has also provided migrant workers night shelters, health care benefits, educational allowances for children, and financial support to transport the mortal remains in case of natural death.

Odisha has been a model State in terms of protecting the migrant workers in the destination States. At all levels, the Odisha government has comprehensively framed a model by providing shelter and schooling for the children of migrant workers both at source and receiving destination to reduce the number of school dropouts. It has initiated measures against contractors and agents undertaking illegal activities. The Odisha government has also set up a migration support center for workers from Odisha.

The Odisha model also indicates the importance of networking between States to protect the migrant workers. This kind of safety net is completely absent in other migrant-sending States such as Uttar Pradesh, Rajasthan, and States in the North-east.

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