



# PROTECTION OF HUMAN RIGHTS OF MIGRANTS

NITIN KADYAN

Research Scholar, Law department, MDU, Rohtak, Haryana

## Abstract

Humans have migrated throughout history. People migrate for different reasons, such as reuniting with their families; seeking better economic opportunities; and escaping human rights abuses, including armed conflict, persecution, and torture. Migrants are generally entitled to the same human rights protections as all individuals, although States may limit migrants' rights in some ways, such as with regard to voting and political participation. Many human rights treaties explicitly prohibit discrimination on the basis of national origin and require States to ensure that migrants' human rights are equally protected. Additionally, like other particularly vulnerable groups, migrants have been given special protections under international law, to address situations where their rights are most at risk, such as in the workplace, in detention, or in transit. According to the Office of the United Nations High Commissioner for Human Rights (OHCHR), all migrants, regardless of their status, are entitled to the same international human rights as everyone else. This means that states have an obligation to respect, protect, and fulfill the human rights of migrants. Current paper analyses the human rights of migrants on international level also on national level.

**Keywords:** Migrants, human rights, health, family, life.

## Introduction

“Migration is an expression of the human aspiration for dignity, safety and a better future. It is part of the social fabric, part of our very make-up as a human family.”<sup>1</sup>

<sup>1</sup> National Sample Survey Organisation Ministry of Statistics and Programme Implementation Government of India Sept.2001

There is no clear, universally agreed upon definition of a migrant, sometimes referred to as international migrant<sup>2</sup>. Some human rights bodies and experts differentiate between international migrants and internal migrants, also known as internally displaced persons, and between migrants who were forced to move and migrants who voluntarily moved to improve their situation. Therefore, generally, there are four categories of mobile persons to which international law may refer: people who have moved voluntarily within one State for the purpose of improving their situation, people who were compelled to move internally within one State, people who moved voluntarily across a border for the purpose of improving their situation, and people who were compelled to move across a border. This guide defines migrants as those who cross borders either because they were compelled to or because they chose to do so voluntarily.

## International Conventions

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families: Articles 7, 8, 10, 11, 12, 18, 22, 24, 25, 26, 27, 28, 29, and 30.

- The Migration for Employment Convention (Revised) (No. 97),: Article 6
- The Migrant Workers (Supplementary Provisions) Convention (No. 143)
- The Universal Declaration of Human Rights, : Articles 1, 10, 12, and 13
- The International Covenant on Economic, Social and Cultural Rights, : Articles 6, 7, 8, 9, 10, 11
- The International Covenant on Civil and Political Rights: Articles 8, 13, 14, 21, 22, 26, and 27
- The Convention on the Elimination of All Forms of Discrimination Against Women,: Article 11
- The Convention on the Elimination of All Forms of Racial Discrimination, Article 5
- The Convention on the Rights of the Child. Articles 7, 9, 10, 15, 27, 28, 29, 30, and 32
- The ILO Forced Labour Convention (No. 29), Article 1
- The ILO Freedom of Association and Protection of the Right to Organize Convention (No. 87), Article 2
- The ILO Equal Remuneration Convention (No. 100), Article 2
- The ILO Discrimination (Employment and Occupation) Convention (No. 111), Article 2
- The ILO Minimum Age Convention (No. 38). Articles 1, 2, and 3

Migrants include different categories of persons, including but not limited to migrant workers, migrants in an irregular situation, victims of human trafficking, and smuggled migrants. *See id.* Below is a brief overview of some of the categories of persons encompassed by the term migrant. The following categories are derived from international instruments or are commonly used by international organizations.

Some rights of migrants and refugees under International Humanitarian Law include:

<sup>2</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), *Migration and Human Rights: Improving Human Rights-Based Governance of International Migration* (2013), 7.

- Freedom from torture or inhumane treatment
- Freedom of opinion and expression
- Freedom of thought, conscience, and religion
- Freedom from discrimination
- Right to asylum
- Right to family
- Non-Refoulement
- Right to health
- Right to life
- Equality and non-discrimination
- Protection against arbitrary arrest and detention
- Protection against torture or inhumane treatment
- Prohibition against collective expulsion
- Procedural safeguards in individual expulsion proceedings
- Family rights

## Right to Life

All migrants have a right to life, and States have an obligation to ensure that no migrant is arbitrarily deprived of this right<sup>3</sup>. States should prosecute right to life violations, including extrajudicial killings that take place during a migrant's journey from the country of origin to the country of destination and vice versa<sup>4</sup>. Article 98 of the UN Convention on the Law of the Sea (UNCLOS) places an obligation on shipmasters to assist any person found at sea who is in danger of being lost and rescue persons in distress if informed of their need for assistance, so long as such actions do not seriously endanger the ship, crew, or passengers. Article 98(2) of UNCLOS dictates that coastal States have a positive obligation to cooperate with neighboring States to promote effective search and rescue

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<sup>3</sup> ICCPR, art. 6; ICRMW, art. 9.

<sup>4</sup> UN General Assembly, Resolution 23/20, *Human rights of migrants*, UN Doc. A/HRC/RES/23/20, 26 June 2013, para. 4(c)

services. Additionally, Chapter 2.1.10 of the 1979 International Convention on Maritime Search and Rescue (SAR) notes that persons in distress at sea should be assisted regardless of their nationality, status, or the circumstances in which they are found<sup>5</sup>.

### **Equality and Non-Discrimination**

International human rights law guarantees freedom from discrimination in the enjoyment of human rights for all people, including migrants. For example, Article 2(2) of the International Covenant on Economic, Social and Cultural Rights states, “The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entry into force 3 January 1976), 993 UNTS 3, art. 2(2).

Regional human rights instruments in the Inter-American, European, African and other regional human rights systems also guarantee the right to nondiscrimination<sup>6</sup>.

### **Protection against Arbitrary Arrest and Detention**

Individuals, including migrants, should not be subjected to arbitrary arrest or detention under international human rights law<sup>7</sup>. The prolonged detention of a migrant is not justified simply by the need to wait for an entry permit or until the end of removal proceedings when reporting obligations or other requirements would be less intrusive measures to ensure that the migrant’s situation complies with domestic law<sup>8</sup>.

The European Court of Human Rights (ECtHR) has held that holding a migrant for an unreasonably long period of time without informing him of the reason for detention violates the European Convention on Human Rights (ECHR). In *Saadi v. the United Kingdom*, Saadi fled Iraq and arrived in London where he claimed asylum and was granted “temporary admission.” However, immigration officials detained Saadi in January 2001 for 76 hours before Saadi’s representative was informed of the reasons why Saadi was being detained. The European Court of Human Rights found that the United Kingdom violated Article 5(2) (everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him) of the

<sup>5</sup> International Commission of Jurists, *Migration and International Human Rights Law: A Practitioner’s Guide* (2014), 101.

<sup>6</sup> American Convention on Human Rights “Pact of San José, Costa Rica” (adopted 22 November 1969, entered into force 18 July 1978), 1144 UNTS 123, OASTS No. 36, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25, art. 1 (American Convention); African (Banjul) Charter on Human and Peoples’ Rights (adopted 27 June 1981, entered into force 21 October 1986), 21 ILM 58 (African Charter), art. 2; Arab Charter on Human Rights (adopted 22 May 2004, entered into force 15 March 2008), 12 Int’l Hum. Rts. Rep. 893 (2005) (ArCHR), art. 3; Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 4 November 1950, entered into force 3 September 1953), 213 UNTS 221 (European Convention on Human Rights, as amended) (ECHR), art. 14.

<sup>7</sup> African Charter, art. 6; American Convention, art. 7; ArCHR, art 14; ECHR, art. 5; ICCPR, art. 9. Under Article 9 of the ICCPR, a State must not arbitrarily arrest and detain an individual, and the State must show that other less intrusive measures besides detention have been considered and found to be insufficient to prove detention is not arbitrary.

<sup>8</sup> Human Rights Committee, *A v. Australia*, Communication No. 560/1993, Views of 30 April 1997, para. 8.2.

ECHR because Saadi was not promptly notified about why he was detained. The ECtHR noted that in order for States to comply with the European Convention detention must be carried out in good faith; it must be closely connected to the purpose of preventing unauthorized entry of the person to the country; the place and conditions of detention should be appropriate, bearing in mind that “the measure is applicable not to those who have committed criminal offences but to aliens who, often fearing for their lives, have fled from their own country.”<sup>9</sup>

Article 16(4) of the ICRMW specially protects migrant workers and their families from individual or collective arbitrary arrest or detention. The Committee on Migrant Workers notes that in order for arrest or detention to not be arbitrary, it must be “prescribed by law,” “pursue a legitimate aim under the ICRMW,” be “necessary in the specific circumstances,” and “proportionate to the legitimate aim.”<sup>10</sup>

### **Protection against Torture or Inhuman Treatment**

The prohibition of torture is a *jus cogens* or peremptory norm of international law, which means that States have an obligation to enforce the prohibition of torture even if that State has not ratified a relevant treaty. Additionally, Article 2(2) of the Convention against Torture states that a State may never cite exceptional circumstances, including war or a public emergency, to justify torture. The ICCPR and regional human rights treaties also prohibit torture and cruel, inhuman, or degrading treatment.<sup>11</sup>

The ICRMW generally guarantees migrant workers the right to be free from torture and cruel, inhuman, or degrading treatment under Article 10 and specifically guarantees detained migrant workers the right to humane treatment during detention under Article 17(1). To guarantee the latter provision, States parties are obligated to ensure that they provide adequate conditions in accordance with international human rights standards, including by providing adequate food and drinking water; allowing communication with family and friends; providing access to qualified medical personnel; and protecting them from inhumane treatment, including sexual abuse. Additionally, accused migrants should not be placed together with convicted persons.<sup>12</sup>

### **Non-Refoulement**

Non-refoulement, a basic principle of refugee law, refers to the obligation of States not to refoule, or return, a refugee to “the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership in a particular social group or political opinion.” 1951 Convention relating to the Status

<sup>9</sup> ECtHR, *Saadi v. United Kingdom*, [GC], no. 13229/03, ECHR 2008, Judgment of 29 January 2008, paras. 67-74.

<sup>10</sup> *General Comment No. 2*, 28 August 2013, para. 23. Additionally, the CMW stresses that the criminalization of irregular migration does not constitute a legitimate interest in regulating irregular migration. *See id.* at para. 24. Furthermore, the CMW emphasizes that lawful administrative detention may transform into an arbitrary detention if it exceeds the time period for which a State can properly justify the detention. *See id.* at para. 27.

<sup>11</sup> ICCPR, art. 7; ECHR, art. 3; American Convention, art. 5(2); ArCHR, art. 8; African Charter, art. 5. Article 7 of the ICCPR extends the prohibition against torture or inhuman treatment to nonconsensual medical or scientific experimentation.

<sup>12</sup> *General Comment No. 2*, 28 August 2013, paras. 36-48.

of Refugees, art. 33(1). Non-refoulement is universally acknowledged as a human right. It is expressly stated in human rights treaties such as Article 3 of the Convention against Torture and Article 22(8) of the American Convention on Human Rights.

### **Prohibition against Collective Expulsion**

The prohibition of collective expulsion of aliens is part of customary international law, and, therefore, every State, regardless of the international treaties it has ratified, is still bound by the obligation to uphold the prohibition<sup>13</sup>. Additionally, many of the major human rights instruments prohibit the collective expulsion of aliens<sup>14</sup>.

While the ICCPR does not contain a provision that explicitly prohibits the collective expulsion of aliens, the Human Rights Committee has found that the prohibition can be read into the provisions of the ICCPR and found that collective expulsion may amount to a crime against humanity. The Human Rights Committee has found that Article 13, which regulates the procedural aspect of expulsion, prohibits collective or mass expulsions<sup>15</sup>. The Committee noted further that the “deportation or forcible transfer of population without grounds permitted under international law [under the Rome Statute of the International Criminal Court], in the form of forced displacement by expulsion or other coercive means from the area in which the persons concerned are lawfully present, constitutes a crime against humanity.”<sup>16</sup> Moreover, the Committee declared that a State’s ability to derogate from Article 12, which guarantees freedom of movement, does not justify introducing collective expulsion measures.

### **Family Rights**

International human rights norms require States to consider migrants’ family life and their family members in decisions regarding their admission, detention, or expulsion. For example, the ICRMW obligates States parties to “pay attention to the problems that may be posed for members of his or her family, in particular for spouses and minor children” when a migrant worker is detained and to “take appropriate measures to ensure the protection of the unity of the families of migrant workers.”<sup>17</sup> The Inter-American Commission on Human Rights has similarly concluded that States subject to its jurisdiction must take into account a migrant’s family ties, and the impact on his family members, in the host country in determining whether to deport him or her<sup>18</sup>.

<sup>13</sup> *Third report on the expulsion of aliens by Mr. Maurice Kamto, Special Rapporteur*, UN Doc. A/CN.4/581, 19 April 2007, para. 115.

<sup>14</sup> Protocol 4 to the ECHR, art. 4; African Charter, art. 12(5); American Convention, art. 22(9); ArCHR, art. 26(2); ICRMW art. 22(1). Article 22(1) of the ICRMW also prohibits the collective expulsion of migrants and requires States to decide each migrant worker’s case individually.

<sup>15</sup> *General Comment No. 15: The position of aliens under the Covenant*, 11 April 1986, para. 10.

<sup>16</sup> Human Rights Committee, *General Comment No. 29: States of Emergency*, UN Doc. CCPR/C/21/Rev.1/Add.11, 31 August 2001, para. 13(d).

<sup>17</sup> ICRMW, arts. 17(6), 44.

<sup>18</sup> IACHR, Report No. 81.10, Case 12.562, *Wayne Smith, Hugo Armendariz, et al.* (United States), July 12, 2010.



## Protection against Labor Exploitation

Migrants are protected against labor exploitation under ILO conventions, the ICRMW, and other major human rights treaties. Article 11 of the ICRMW explicitly prohibits forced labor, slavery, and servitude. Article 8 of the International Covenant on Civil and Political Rights states that no one shall be held in slavery or servitude. States have an obligation to take measures to prevent all forms of forced or compulsory labor by migrant workers, which includes eliminating the use of illegal confinement and withholding travel documents as a means to force migrants into compulsory labor<sup>19</sup>.

The Committee on the Elimination of Racial Discrimination (CERD) noted that although States may enact laws requiring individuals to have a work permit, “all individuals are entitled to the enjoyment of labor and employment rights, including the freedom of assembly and association, once an employment relationship has been initiated until it is terminated.”<sup>20</sup> With respect to migrant children, the Committee on the Rights of the Child (CRC) recommended that States develop labor and migration policies in accordance with the Convention on the Rights of the Child and ILO Conventions No. 138 concerning Minimum Age for Admission to Employment, No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, and No. 189 concerning decent work for domestic workers<sup>21</sup>. Additionally, the Committee suggested that States implement monitoring systems concerning child rights violations in the workplace.

## Right to Social Security

Article 27 of the ICRMW outlines the right to social security and notes that all migrant workers and their families, regardless of their status, have the right to receive the same treatment as nationals “insofar as they fulfill the requirements provided for by the applicable legislation of that State and the applicable bilateral and multilateral treaties.” If migrants are not eligible for a particular benefit, States have an obligation to determine whether it is possible to reimburse individuals who have made contributions with respect to that benefit<sup>22</sup>. The Committee on Migrant Workers elaborated that if reimbursement is impossible, States should provide objective reasons for reaching its decision in each case<sup>23</sup>. However, a decision to not reimburse contributions should not discriminate solely on the basis of nationality or migration status.

## Right to Highest Attainable Standard of Physical and Mental Health

The ICRMW under Article 28 only requires States to provide migrant workers and their families with medical care that is urgently needed to save their lives on the same basis as nationals, but a State’s obligation to ensure the right

<sup>19</sup> ILO Forced Labour Convention (No. 29), art. 11; *General Comment No. 2*, 28 August 2013, para. 60.

<sup>20</sup> General Recommendation No. 30 on discrimination against non-citizens, 19 August 2004, para. 35. *See also General Comment No. 2*, 28 August 2013, para. 62;

<sup>21</sup> CRC, *Report of the 2012 Day of General Discussion on the Rights of All Children in the Context of International Migration*, 28 September 2012, para. 90.

<sup>22</sup> ICRMW, art. 27.

<sup>23</sup> *General Comment No. 2*, 28 August 2013, para. 69.

to health is much broader under international human rights law<sup>24</sup>. Article 12 of the International Covenant on Economic, Social and Cultural Rights establishes the right to attain the highest standard of health for all persons, and the Committee on Economic, Social and Cultural Rights concluded, “persons, irrespective of their nationality, residency or immigration status, are entitled to [both] primary and emergency medical care.<sup>25</sup>” Furthermore, the Committee on the Elimination of Racial Discrimination noted that States have an obligation to “ensure... the right of (undocumented) non-citizens to an adequate standard of physical and mental health by, inter alia, refraining from denying or limiting their access to preventive, curative and palliative health services.<sup>26</sup>”

### **Right to Primary Education**

States have an obligation to provide free and compulsory primary education at public institutions for all children<sup>27</sup>. Article 30 of the ICRMW expands on this obligation, noting that States may not refuse or limit a child’s access to public pre-school educational institutions or schools based on a parent’s or child’s irregular situation.

### **Freedom of Movement**

Migrants have the right to freedom of movement within the territory of the State in which they are located, the right to leave a State, and the right to return home to their own State<sup>28</sup>. This right does not guarantee the right of entry into any State<sup>29</sup>.

### **Right to Enjoy Culture in Community with Others**

Under Article 27 of the International Covenant on Civil and Political Rights, migrants who belong to an ethnic, religious, or linguistic minority group have the right to enjoy, practice, and use their culture, religion, and language together with other members of their community<sup>30</sup>. The Human Rights Committee has stated that this right applies to all individuals within a territory, including those who do not have permanent residency status or are temporarily in the State<sup>31</sup>. Furthermore, the determination that an ethnic, religious, or linguistic minority exists is not one that the State makes but depends on objective factors. The State has a positive obligation to protect the right and the identity of the minority group through policy initiatives and to prevent the infringement of the right by third parties<sup>32</sup>.

<sup>24</sup> *General Comment No. 2*, 28 August 2013, para. 72

<sup>25</sup> CESCR, *General Comment No. 19 on the right to social security*, UN Doc. E/C.12/GC/19, 4 February 2008, para. 37.

<sup>26</sup> *General Recommendation No. 30: Discrimination against non-citizens*, 19 August 2004, prmb. and para. 36.

<sup>27</sup> Convention on the Rights of the Child, art. 28(1)(a); ICESCR, art. 13.2(a), 14; American Convention, art. 13.3(a); European Social Charter (revised) (adopted 3 May 1996, entry into force 1 July 1999), 2151 UNTS 277, art. 17.

<sup>28</sup> ICCPR, art. 12; ICRMW, art. 39; Convention on the Rights of the Child, art. 10(2); ICERD, art. 5; *General Comment No. 15: The Position of Aliens Under the Covenant*, 11 April 1986; Committee on the Elimination of Racial Discrimination, *General Recommendation No. 22: Article 5 and refugees and displaced persons*, UN Doc. A/54/18, 24 August 1996.

<sup>29</sup> *General Comment No. 15: The Position of Aliens Under the Covenant*, 11 April 1986, para. 5.

<sup>30</sup> ICCPR, art. 27; Human Rights Committee, *General Comment No. 23: Article 27 (Rights of Minorities)*, UN Doc. CCPR/C/21/Rev.1/Add.5, 8 April 1994, para. 5.1.

<sup>31</sup> *General Comment No. 23: Article 27 (Rights of Minorities)*, 8 April 1994, para. 5.2.

<sup>32</sup> *id.* at para. 6.1-6.2.



## Permissible Restrictions on Migrants' Human Rights

While the core human rights standards apply equally to migrants and non-migrants, regardless of their legal status in a country, and prohibit discrimination on the basis of national origin, there are exceptions to these rules<sup>33</sup>. International Convention on the Elimination of All Forms of Racial Discrimination, arts. 1(2) and (3). International human rights law does allow States to treat citizens and non-citizens differently if the difference in treatment serves a legitimate State objective and is proportional to its achievement<sup>34</sup>.

In *A. v. Australia*, the Human Rights Committee found Australia had violated the right to liberty under Article 9 of the ICCPR by arbitrarily detaining the applicant, a migrant and Cambodian national who arrived to Australia by boat. He alleged that he was arbitrarily detained in Australia while his application for refugee status was pending. His detention was arbitrary, he argued, because there was no legitimate reason to detain him; at the time of filing his application, his detention had lasted for over three and a half years; and there was no available judicial review of his detention. The Human Rights Committee found that the State's justifications for detention – that the applicant was a flight risk and had entered the country illegally – were insufficient to keep the applicant in detention for a total of four years in violation of the rights to liberty and security of Article 9(1) of the ICCPR. Additionally, the Committee found that the State's restricted ability under recently passed legislation to review the lawfulness of detention of migrants was in violation of Article 9(4)<sup>35</sup>.

In *Hirsi Jamaa and Others v. Italy*, the European Court of Human Rights held that Article 3 of the European Convention on Human Rights, which prohibits torture and cruel, inhuman, or degrading treatment, places an obligation on State parties not to expel migrants to a country where the State party is aware that the migrants face risk of the treatment prohibited under Article 3. The 24 applicants, who are nationals of Somalia and Eritrea and were sent by Italian police to Libya, alleged that the Italian authorities returned them to a country where they were likely to face torture or cruel, inhuman, or degrading treatment within the country and likely to be repatriated back to their countries of origin where they would also likely face similar treatment. Because the Italian authorities knew the applicants were likely to be exposed to treatment as described under Article 3 both within Libya and in their home countries, which they were likely be sent back to once in Libya, the European Court held that Italy violated Article 3 of the Convention<sup>36</sup>.

In *Good v. Botswana*, the African Commission on Human and Peoples' Rights held that the inability to challenge an order of removal in the judicial system is a violation of the right to fair trial and right of non-nationals to be expelled according to the law. The complainant is a national of Australia who was working in Botswana when the

<sup>33</sup> *General Comment No. 15: The Position of Aliens Under the Covenant*, 11 April 1986;

<sup>34</sup> Committee on Elimination of Racial Discrimination (CERD), *General Recommendation No. 30: Discrimination against non-citizens*, UN Doc. CERD/C/64/Misc.11/rev.3, 19 August 2004.

<sup>35</sup> Human Rights Committee, *A. v. Australia*, Communication No. 560/1993, Views of 3 April 1997, UN Doc. CCPR/C/59/D/560/1993.

<sup>36</sup> ECtHR, *Hirsi Jamaa and Others v. Italy* [GC], no. 2776/09, ECHR 2012, Judgment of 23 February 2012.

President ordered him removed from the country after he wrote and published an article critical of the government. National legislation prohibited the domestic courts from hearing an appeal of an executive order of removal. The African Commission found violations of articles 7(1) and 12(4) of the African Charter on Human and Peoples' Rights, which guarantees the right to have one's cause heard by a competent tribunal and the right of non-nationals to only be expelled in accordance with the law. Furthermore, because the deportation orders, which were carried out the same day as the court's ruling that it could not hear the complainant's case, did not take into account the complainant's family and the mutual support they derive from one another, the removal of the complainant violated his right to family life under Article 18<sup>37</sup>.

In *Ramón Martínez Villareal* (United States), the Inter-American Commission on Human Rights found that the United States violated the rights to due process and a fair trial under the American Declaration on the Rights and Duties of Man because the State failed to inform the applicant, who was convicted of a crime in the United States, of his right to consular relations. The Inter-American Commission referenced the obligations under Article 36 of the Vienna Convention on Consular Relations to inform the rights under the American Declaration. Article 36 of the Vienna Convention requires a State party to inform a non-national who has been arrested or detained that they have a right to communication with the consular office of their home State. A lack of communication with the consular office could result, the Commission noted, in due process violations due to factors including a lack of familiarity with the State's judicial system or a language barriers<sup>38</sup>.

### Indian perspective

The main challenge for immigrants, however, is to acquire citizenship of the host country and avail the fundamental rights to the country they have migrated to. These issues are usually addressed by specifically formulated laws and policies for immigrants that lay out the process and restrictions for getting the citizenship. But as far as the Indian subcontinent is concerned, the immigration laws are governed by the provisions of the Constitution of India. Articles 5 to 11 in Part-II of the Constitution deals with citizenship and it defines a citizen as a person of Indian domicile or someone with an Indian lineage in the family. Article 10 deals with the continuance of foreigners as Indian citizens, subject to any laws enacted thereafter by the legislature. The Indian constitution only recognizes single citizenship throughout the country and does not support dual citizenship.

It also declares that a foreign citizen can acquire Indian citizenship through the process of Naturalization (ordinarily residing in India for 14 years) and registration of foreigners with the FRRO (Foreigners Regional Registration Officer) or FRO (Foreigners Registration Officer). The Indian law follows jus sanguinis (citizenship by blood) as opposed to jus soli (citizenship by birth).

- Inter-state Migrant Workmen (Regulation of employment and Conditions of Service) Act (1979)

<sup>37</sup> ACommHPR, *Good v. Botswana*, Communication No. 313/05, 47<sup>th</sup> Ordinary Session, Judgment of 26 May 2010.

<sup>38</sup> IACHR, Merits Report No. 52/02, Case 11.753, *Ramón Martínez Villareal* (United States), 10 October 2002.

- Child Labour (Prohibition and Regulation) Act (1986)
- Building and Other Construction Workers Workmen (Regulation of employment and Conditions of Service) Act (1996)
- Unorganized Workers Social Security Act (2008)
- Contract Labour (Regulation and Abolition) Act (1970)

There are certain acts that have been passed to regularize the process of availing citizenship by foreigners, such as:

### **The Passport (Entry in India) Act, 1920**

Under this act, the foreigners entering India are required to get visa from India Missions. The act also prescribes specific documents for submission during their valid travel for allowing into the country.

### **The Foreigners Act, 1946**

This act regulates the entry and the residence of the foreigners within the Indian borders until their departure from the country.

### **The Registration of Foreigners Act, 1939 and The Registration of Foreigners Rules, 1992**

It mandates that certain foreigners who stay past their specified visa period must register with the Registration Officer.

### **Impact of lockdown due to COVID-19 on the migrant workers**

The Constitution of India protects labour's rights. The Preamble, Fundamental Rights and Directive Principles of State Policy under Part IV of the Constitution. Article 14 states everyone should be equal before the law, Article 15 specifically says the state should not discriminate against citizens, and Article 16 extends a right of 'equality of opportunity for employment or appointment under the state. Article 43 says workers should have the right to a living wage and "conditions of work ensuring a decent standard of life". Article 43A, inserted by the Forty-second Amendment of the Constitution of India in 1976, requires the state to legislate to "secure the participation of workers in the management of undertakings".

India's country-wide lockdown amidst the outbreak of COVID-19 pandemic has critically impacted the whole nation. It has led to a number of hardships to businesses and job-goers. However, the worst affected section of society would-be migrant workers. The migrant workers thrive on rootless existence with no proper place to stay and establish themselves. In fact, Interstate migration is a massive phenomenon. This lockdown has completely dislocated the migrant population. Recently due to the sudden shut down of public transportation, thousands of

migrants were forced to walk miles in order to reach their home villages. Some migrant workers and their children also died on their way back to their home journey. The truth is saddening.

Migrant workers became one of the most vulnerable groups whose rights remain eclipsed due to the lack of timely governmental action. The condition of migrant workers is already pitiable. Each day's economic productivity decides the amount of wages they receive. Thus, during the lockdown, since such workers became economically unproductive, they didn't receive any payment. With little or no savings at hand, a massive exodus of migrant workers took place.

The lockdown was implemented via the implications under the Epidemic Diseases Act, 1897 and the Disaster Management Act, 2005. On the 29th of March, the Home Ministry released an order stating that the exodus movement of migrant workers is to be treated as a violation of the lockdown guidelines mandate.

The Occupational Safety, Health and Working Conditions Code, 2020 (OSH) was introduced in Lok Sabha on September 19 and passed on September 22. It was introduced and passed in Rajya Sabha on September 23. According to the previous legislation, The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, only the interstate migrant workers hired through contractors were covered under labour laws. Therefore, the migrant workers who travelled on their own account for employment or in search of employment from villages to big cities were not covered under the ambit of the labour laws.

## **Conclusion**

Migration is a function of certain objective social conditions operating at the rural source and at the urban destination. Those conditions are generally referred to as rural push and urban pull factors of migration. The interplay of these push-pull factors plays an important role in determining the flow of out- or in-migration. This challenging and unprecedented time requires swift and immediate actions to be taken to redress the problems faced by migrants and refugees. While a lot has been done to raise awareness, we have no cause for complacency. Most displacement which had occurred in the last few decades could have been prevented in the first place if the parties respected the international humanitarian laws. Those obliged to flee would suffer less if the parties respected the displaced as civilians of their own rather than treating them as outsiders. Sadly, not much has improved in this area. Humanitarian action can bring some relief but it is up to the state parties to conflicts to respect and protect civilians.