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LEGAL PROTECTION FOR MIGRANT WORKERS IN INDIA: ISSUES AND CHALLENGES

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Abstract

The legal and socio-economic landscape of migrant labour in India represents a complex intersection of international normative standards and domestic regulatory frameworks. This article critically examines the structural efficacy of the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 (ISMW Act), in safeguarding the rights of workers within the unorganized sector. By synthesizing contemporary data from the International Labour Organization (ILO) and India's Periodic Labour Force Survey (PLFS) 2020-21, the discourse highlights the profound vulnerabilities of migrant populations, with a specialized focus on the gendered plights of women in the construction and domestic sectors. The analysis reveals a significant "informality gap," where statutory protections are undermined by systemic enforcement deficits and a critical lack of worker awareness regarding social security entitlements. Evaluating a spectrum of governmental schemes, ranging from food security via the One Nation One Ration Card (ONORC) to health assurances under Pradhan Mantri Jan Arogya Yojana (PMJAY) the study argues for a paradigm shift toward the "portability of rights." Ultimately, the article proposes a modernized regulatory approach that integrates digital registration and sector-specific protections to reconcile the divergence between *de jure* legal ideals and the *de facto* realities of migrant exploitation.

Keywords: *Social security, Migrant women workers, Inter-State Migrant Workmen Act, Unorganized sector, Regulatory enforcement.*

Introduction

The legal status and protection of migrant labour serve as a strategic indicator of a nation's commitment to human rights and its internal economic resilience. In the contemporary globalized economy, migration is not merely a demographic shift but a vital economic necessity; yet, the labourers driving this development often exist in a state of legal invisibility. Within the Indian context, migrant workers constitute the backbone of the unorganized sector, providing the essential human capital required for the sustainability of agriculture, domestic services, and the construction industry. The strategic necessity of this labour force is undeniable, as it facilitates regional economic equilibrium by addressing localized labour shortages and contributing to the national GDP. However, the systemic failure to adequately regulate this migration and provide robust social safety nets poses a profound risk to national social stability. This research aims to analyse the widening gap between the protective intent of existing statutes and the precarious lived realities or "plight" of the workers themselves. By investigating the transition from traditional "Dadan Labour" regulations to modern social security schemes, this article seeks to define the legal parameters of migrant identity and evaluate the efficacy of the frameworks intended to govern their welfare. The transition from general economic participation to specific legal categorization is the essential first step in understanding the mechanisms of state intervention in a mobile labour market.

DEFINITION OF MIGRANT WORKERS AND THEIR LEGAL STATUS

The definition of a "migrant worker" serves as the foundational threshold for all subsequent rights-based claims and statutory protections. At the international level, the International Labour Organization (ILO) provides a broad framework, defining a migrant worker as any person who migrates from one country to another with the intent of being employed other than on their own account.¹ This definition establishes a standard of labour as a global commodity that requires standardized protection. According to the 2024 ILO report, the scale of this phenomenon remains vast, with an estimated 167.7 million international migrant workers globally. However, a critical nuance for policy analysts is that the growth of this population has slowed down to less than 1 per cent annually due to the lingering impacts of the COVID-19 pandemic, which curtailed mobility and disrupted global labour supply chains.² A demographic analysis reveals that 74.9% of these workers are prime-age adults

¹ International Labour Organization, *ILO Global Estimates on International Migrant Workers: Results and Methodology* (Fourth edition, 2024), at 3.

² *Id.*, at xv-xvii.

between the ages of 25 and 54, indicating that migration is primarily a phenomenon of the most productive segments of the workforce. This demographic dominance suggests that migration is driven by the search for better economic opportunities and the fulfilment of "pull factors" such as higher wages, which are essential for overcoming localized poverty and systemic underemployment in regions of origin.

In the Indian domestic context, legal status is more narrowly defined by the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979. Under Section 2(e) of the Act, an "inter-state migrant workman" is specifically defined as any person recruited by or through a contractor in one State under an agreement or any alternative mode of engagement for work in an establishment located in a different State.³ This definition is significant because it tethers the legal identity of the worker to the mediation of a "contractor" (including agents, Khatadars, or Sardars). Unlike the ILO's broader international definition, the ISMW Act creates a specific legal dependency; if a worker migrates independently without the mediation of a registered contractor, they often fall outside the specific protections of the Act. This distinction between "international" status and "inter-state" status is crucial, as the contractor element creates a unique tripartite relationship designed to assign liability but often resulting in "undocumented" internal migration that bypasses statutory oversight. To counter the inherent risks of this dependency, Section 19 of the Act provides a critical safeguard regarding "Past Liabilities," mandating that any debt or loan obtained by the worker from the contractor or principal employer is deemed extinguished upon the completion of the employment period.⁴ This is a strategic legislative move intended to prevent the transition from contract labour to debt bondage, recognizing that financial indebtedness is a primary mechanism of exploitation in the unorganized sector.

INTER-STATE MIGRANT WORKMEN ACT, 1979

The strategic intent of the Inter-State Migrant Workmen Act, 1979, was to prevent the systemic exploitation of what was historically known as "Dadan Labour", a form of seasonal contract labor prevalent in states like Odisha, where workers were recruited under oppressive conditions.⁵ The Act was essentially a response to the failures of the Orissa Dadan Labour

³ The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 (Act No. 30 of 1979), s. 2(e).

⁴ *Id.*, s. 19.

⁵ *Supra*, note at 3, s. 36.

(Control and Regulation) Act, 1975, seeking to elevate these protections to a national standard to ensure basic human dignity. The regulatory framework operates through a rigorous system of registration and licensing. Under Chapter II, Section 4, every principal employer of an establishment employing five or more inter-state migrant workmen must apply for registration.⁶ This is complemented by Chapter III, Section 8, which mandates that no contractor can recruit or employ migrant workmen without a valid license issued by the appropriate licensing officer. These provisions are designed to create a transparent paper trail of migration, allowing the state to monitor the conditions of employment across state borders and hold the beneficiaries of labour accountable.

Statutory duties imposed on contractors under Section 12 are particularly comprehensive, requiring the issuance of a passbook to every migrant worker. This passbook must be in the worker's native language (in addition to English and Hindi) and must contain granular details regarding the rates of wages, the period of employment, and the specific displacement and journey allowances.⁷ The "Wages, Welfare and Other Facilities" outlined in Chapter V represent the heart of the Act's protective mandate. Section 13 establishes a critical intersection with the Minimum Wages Act, 1948, stipulating that migrant workers must perform the same or similar kind of work as local workmen for the same wages, and in no case should they be paid less than the statutory minimum.⁸ Section 14 mandates the payment of a "Displacement Allowance" at the time of recruitment, equal to 50% of the monthly wages or seventy-five rupees, whichever is higher, to compensate for the upheaval of relocation.⁹ Furthermore, Section 15 requires the payment of a "Journey Allowance," covering the fare for both outward and return journeys, while ensuring that the time spent traveling is treated as time on duty. Perhaps most significantly, Section 16 mandates "Equal Pay for Equal Work" regardless of sex, and Section 18 places the ultimate liability on the "Principal Employer" to provide these facilities and allowances if the contractor fails to do so. This liability is intended to pierce the veil of contractor negligence, ensuring that the ultimate beneficiary of the labour remains legally responsible for the labourer's welfare and survival.

⁶ *Supra*, note at 3, s. 4.

⁷ *Supra*, note at 3, s. 12.

⁸ *Supra*, note at 3, s. 13.

⁹ *Supra*, note at 3, s. 14.

Challenges in the Implementation of the Inter-State Migrant Workmen Act, 1979

Despite the robust statutory "ideal" presented by the 1979 Act, the transition to field-level implementation often fails due to the inherent friction between informal labour markets and rigid legal requirements. One of the most significant barriers is the "Informality Gap," characterized by a profound lack of awareness among the workers themselves. Empirical evidence from a study on migrant women in suburban Chennai revealed that a staggering 95.7% of respondents were unaware of the existence of the Tamil Nadu Construction Workers Welfare Board, and only 2% had any knowledge of the specific schemes provided by such entities.¹⁰ This lack of awareness effectively nullifies the rights-based governance the Act seeks to establish. Furthermore, the "Enforcement Deficit" is exacerbated by the transient nature of the workforce. Studies in states like Maharashtra and Delhi conducted in the pre-COVID-19 lockdown period indicate that the average stay of a migrant worker in a particular state is only two to three years, making long-term monitoring and the provision of localized social security extremely difficult for the Inspectorial staff appointed under Section 20.¹¹

Legal barriers to prosecution further weaken the Act's deterrent effect. Under Section 28, the law stipulates that no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence under the Act.¹² This high jurisdictional threshold, combined with Section 29's strict limitation period, which requires complaints to be made within three months of the Inspector gaining knowledge of the offence creates significant procedural hurdles for seeking justice.¹³ The reliance on contractors often results in the recruitment process remaining subterranean; when contractors operate without licenses, the migration becomes "undocumented" in the internal sense, meaning the workers are not registered with any welfare board. This effectively bypasses the Section 18 liability of the Principal Employer, as there is no formal record connecting the worker to the establishment. Consequently, high workplace risks identified as particularly severe in the manufacturing sectors of Maharashtra remain unmitigated, as the legal mechanisms for accidental death

¹⁰ R Belinda, "A study on migrant women construction workers in sub urban Chennai" (2010); Rahul P. Muragod & Santosh L. Patil, "A Study on Social Security and Welfare Schemes for Migrant Workers in India" 12 *IJCRT* (2024).

¹¹ Jacob John, P. S. Biju and K. J. Joseph, "Social Security and Health Rights of Interstate Migrant Workers: Discriminations and Human Rights Violations in Pre-COVID-19 Lockdown" (2020) *Journal of Social Work and Social Development*, pp. 1–15.

¹² *Supra*, note at 3, s. 28.

¹³ *Supra*, note at 3, s. 29.

benefits and medical care are never triggered because the worker technically does not exist in the employer's formal ledger.

LEGAL PROTECTION TO MIGRANT WORKERS UNDER NEW LABOUR CODE, 2020

The Government of India restructured its labour law framework by merging numerous existing statutes into four comprehensive codes. This reform was intended to simplify regulation, improve governance, and strengthen worker welfare in line with changing employment patterns. Earlier, the “Inter-State Migrant Workmen Act, 1979” was enacted to regulate migrant labour and prevent exploitation. However, its limited scope and weak enforcement reduced its effectiveness over time.¹⁴ To address these gaps, the Occupational Safety, Health and Working Conditions Code, 2020 replaced the earlier law and introduced broader protections for migrant workers.

The Code on Wages, 2019 represents a major step toward rationalizing wage-related laws by subsuming multiple earlier enactments into a single legislative instrument. Its primary objective is to establish a coherent wage framework that balances worker protection with ease of compliance for employers. In doing so, it introduces standardized principles governing wage determination, payment, and regulation, thereby reducing inconsistencies that existed under the previous fragmented system.¹⁵

Definition of Migrant Workers under the Wage Code, 2019

According to the “Code on Wages, 2019”, the scope of protection depends largely on the definitions of “contract labour” and “employee.” A contract worker includes anyone engaged through a contractor in connection with an establishment, which also covers inter-state migrant workers. This ensures their entitlement to benefits such as fair wages and regulated working conditions. The term “employee” is defined broadly to include individuals performing various types of work for wages under any form of employment arrangement. However, certain categories like apprentices and members of the armed forces are kept outside this definition.

¹⁴ Government of India, “New Labour Code for New India: Biggest Labour Reforms in Independent India”, available at: <https://www.india.gov.in/spotlight/details/new-labour-code-for-new-india-biggest-labour-reforms-in-independent-india> (last visited on 24 March 2026).

¹⁵ Government of India, Code on Wages, 2019 (Act No. 29 of 2019).

Wage Protections of Migrant Workers under the Wage Code, 2019

The Code protects the interests of employees by guaranteeing fair wages, social security, and safeguards against exploitation, promoting dignity and stability in the workplace. It advances gender equality by ensuring equal pay and participation for women workers, fostering inclusivity.¹⁶ The Code on Wages, 2019 introduces several key protections to ensuring fair wages and economic security for workers, including migrant and unorganised labour.

It establishes **floor wages** as a statutory safeguard, whereby the Central Government fixes a baseline wage based on minimum living standards such as food and clothing.¹⁷ State governments cannot fix wages below this level, thereby reducing wage disparities and migration driven solely by economic differences.

The Code mandates the fixation of minimum wages for all employees, based on skill level, nature of work, and geographical location, with periodic revision not exceeding five years¹⁸. Another significant development is the adoption of a uniform definition of wages, which includes core components such as basic pay and dearness allowance while placing a ceiling on permissible exclusions. This structural clarity enhances transparency in wage computation and indirectly strengthens access to social security benefits linked to wage calculations, thereby offering greater financial security to workers engaged in precarious forms of employment.

The Code regulates working hours, ensuring that employees are not overworked without compensation, and mandates overtime wages at twice the normal rate¹⁹. It also ensures timely wage payment, extending protections to whole workers irrespective of wage ceilings, and prescribes specific timelines for payment depending on the wage period²⁰. Employers are held strictly liable for non-payment.

¹⁶ Ministry of Labour and Employment, Press Information Bureau, “Code on Wages, 2019: Safeguards Workers, Induces Growth, Empowers Women & Enhances Employment” (23 November 2025), available at: <https://www.pib.gov.in> (last visited on 23 March 2026).

¹⁷ Code on Wages, 2019 (Act No. 29 of 2019), s. 9 read with Rule 11.

¹⁸ *Id.*, s. 8.

¹⁹ *Supra*, note at 17, s. 13 read with Rule 6.

²⁰ Press Information Bureau, Government of India, “Code on Wages, 2019 Safeguards Workers, Induces Growth, Empowers Women & Enhances Employment” (23 November 2025), available at: PIB Factsheet (last visited on 24 March 2026).

Further, the Code enhances transparency through mandatory wage slips²¹, guarantees annual bonus (8½% to 20%), and extends the limitation period for claims to three years. It also ensures minimum wage protection for piece-rate workers and prohibits gender-based wage discrimination, thereby promoting equality and fair labour standards across sectors.

Challenges faced in Effective Implementation of the Social Security Code, 2020

Legal clarity is crucial without explicit statutory definition, enforcement remains uncertain, risking inconsistent interpretation and undermining policy objectives. The government's FAQs indicate an intention to cap wages at 50% of remuneration; however, this limit lacks statutory backing. Such divergence between policy intent and legislative text exposes legal ambiguities, emphasizing the necessity for explicit legal codification to ensure clarity, compliance, and the effective realization of intended labour protections.²²

Social Security for Migrant Workers under Social Security Code, 2020

The Code on Social Security, 2020 was introduced by the Central Government as part of a broader effort to extend social protection to a larger section of the workforce, covering both organized and unorganized sectors. Instead of continuing with multiple fragmented laws, the legislation brings together various aspects of social security under a single, unified framework. This consolidation reflects an attempt to simplify the legal structure while making social security measures more accessible and comprehensive for workers across different forms of employment.

Definition of inter-state migrant workers

According to the Code, an inter-State migrant worker is anyone who moves from one State to another for employment, either through an employer/contractor or independently, and earns wages up to ₹18,000 or such higher amount as notified.²³ The Code defines contract labour as workers engaged through a contractor for an establishment, including **migrant**

²¹ *Supra*, note at 17, s. 50(3) read with Rule.34.

²² "New Labour Codes Rollout: Employers Face Compliance Challenges, Wage Changes and Higher Costs Amid Pending Rules", *The Economic Times*, 23 March 2026, available at: <https://economictimes.indiatimes.com/wealth/save/new-labour-codes-rollout-employers-face-compliance-challenges-wage-changes-and-higher-costs-amid-pending-rules/articleshow/129704991.cms> (last visited on 24 March 2026).

²³ *Supra*, note at 17, s. 2(41).

workers, but excludes those permanently employed by the contractor with full benefits.²⁴ A wage worker refers to a person in the unorganised sector earning remuneration, including casual, home-based, and migrant workers, thereby ensuring their inclusion within the social security framework.²⁵

Social Security Measures for migrant workers

The Code adopts a two-fold approach to extend social security coverage to migrant workers based on their employment status. Those engaged through formal or contractual arrangements are treated as employees and can access structured statutory benefits. Workers outside such arrangements are included within the unorganised sector to ensure they are not left without protection. This framework enables coverage against risks such as illness, old age, unemployment, disability, and loss of income. Overall, it aims to bring migrant workers within a broader system of social security through inclusive categorization.²⁶

Social Security through Employees' Provident Fund (EPF)

The Code brings inter-State migrant workers under EPF once they qualify as employees, ensuring long-term savings through joint contributions by employers and workers. This creates a financial safety net for migrants with unstable incomes. Smaller establishments can also voluntarily opt into the scheme, widening potential coverage.²⁷

Social Security through Employees' State Insurance (ESI)

The framework also provides access to insurance-based benefits that address health-related contingencies. These include medical care, income support during illness, maternity-related assistance, and compensation for employment-related injuries. Such provisions are especially significant for migrant workers, who are often exposed to hazardous working environments and limited access to healthcare facilities.²⁸

²⁴ *Supra*, note at 17, s. 2(19).

²⁵ *Supra*, note at 17, s. 2(90).

²⁶ "The Social Security Code, 2020 and Its Impact on Migrant Workers", *Youth Ki Awaaz* (January 2025), available at: <https://www.youthkiawaaz.com/2025/01/the-social-security-code-2020-and-its-impact-on-migrant-workers/> (last visited on 25 March 2026).

²⁷ *Supra*, note at 17, ch. III.

²⁸ *Supra*, note at 17, ch. IV.

Social Security through Gratuity

Chapter V of the Code incorporates provisions relating to gratuity, providing financial security to employees upon termination of employment after continuous service, including for fixed-term workers on a pro rata basis. This is beneficial for migrant workers engaged for shorter durations.²⁹ Yet, irregular and fragmented employment often disrupts eligibility in practice.

Social Security through Maternity Benefit

Women migrant workers are entitled to maternity benefits, including paid maternity leave³⁰ and medical care, once covered under the Code. Employers must ensure income protection and non-discrimination during pregnancy. By guaranteeing maternity protection, this chapter promotes social justice and gender-sensitive labour welfare, ensuring that women migrant workers are not forced to choose between employment and motherhood.

Social Security through Employee's Compensation

The Code provides protection to workers by ensuring compensation in cases of employment-related injury, disability, or death. It places a clear responsibility on employers to compensate workers for accidents that occur during the course of employment, including those arising from occupational hazards. This mechanism is particularly important for migrant workers, as it offers financial relief to them or their families when their earning capacity is affected due to unforeseen workplace incidents.³¹

Social Security and Cess in respect of Building and Other Construction Workers

The legislation recognizes the construction sector as one of the largest employers of migrant labour and accordingly introduces specific welfare measures for this category of workers. This chapter ensures the collection of cess from employers engaged in construction activities, which is then utilized for funding welfare schemes for such workers. For migrant workers, it creates a dedicated welfare fund that can be used to address their specific vulnerabilities in the construction sector. It thus acts as a sector-specific social security

²⁹ *Supra*, note at 17, s. 54, ch. V.

³⁰ *Supra*, note at 17, s. 60, ch. VI.

³¹ *Supra*, note at 17, s. 74, ch. VII.

mechanism, ensuring that migrant workers engaged in construction work receive targeted protection and benefits through statutory funding.

Social Security through Scheme-Based Welfare Protection for Unorganised Workers

A significant aspect of the Code lies in its focus on unorganised workers, a category that includes a large proportion of inter-state migrant labour. The framework enables the government to design and implement welfare schemes tailored to their needs. These schemes may cover areas such as health care, maternity support, disability assistance, old-age security, and educational benefits.³² By incorporating migrant workers within this broader category, the Code creates an avenue for extending social protection to those who are otherwise outside formal employment structures

Social Security through Worker Registration

The Code introduces a system of registration for unorganised workers under chapter IX, which facilitates the creation of a national database, including migrants, for better policy delivery.³³ It relies on Aadhaar-based identification and self-registration. Practical issues like low digital access and awareness may limit its effectiveness.

Social Security Fund for Unorganised Workers

The Code also establishes a dedicated fund intended to support welfare initiatives for unorganised workers. This fund supports welfare schemes for unorganised workers, including migrants. It acts as a financial base to strengthen social security coverage for vulnerable labour groups.³⁴

Challenges faced in Effective Implementation

The framework also introduces supportive measures such as a dedicated fund and helplines to assist workers. These steps reflect an effort to improve access to welfare, especially for vulnerable groups like migrant labour. However, merely providing for such measures in law does not guarantee their effectiveness in practice. Their success will largely depend on how

³² *Supra*, note at 17, s. 109, ch. IX.

³³ *Supra*, note at 17, s. 113 read with Rule 3 & 6, Code on Social Security (Central) Rules, 2020.

³⁴ *Supra*, note at 17, s. 141, ch. XIV (Miscellaneous)

efficiently they are implemented at the ground level. In this context, it remains uncertain whether these provisions will achieve better outcomes compared to the earlier regulatory framework governing migrant labour.³⁵

The Social Security framework uses classifications such as wage limits and establishment size, which can exclude many workers from coverage. These thresholds may weaken the objective of providing broad and inclusive protection. There is also a noticeable gap between sectors, as organised workers receive enforceable rights, while unorganised workers depend on welfare schemes that are not always assured. This creates inconsistency in the level of protection available.

Several key aspects, including benefits and contributions, are left to be determined through executive rules, which may reduce clarity and transparency. Practical challenges also arise from requirements like self-registration and reliance on digital tools such as Aadhaar and smartphones. Additionally, unclear categorisation of emerging work arrangements, including gig and platform work, makes effective implementation more complex.

Occupational Safety and Health Protection of Migrant Workers under the OSHWC Code, 2020

The Occupational Safety, Health and Working Conditions Code, 2020 seeks to simplify and update labour laws by combining earlier statutes into a single framework. It replaces the previous framework governing migrant workers and introduces a new regulatory framework. This change reflects evolving policy priorities in addressing migrant labour. Although it includes features like benefit portability and helplines, its coverage is restricted by wage limits and establishment size, which raises concerns about its overall reach and implementation.

Definition of Inter State Migrant Worker

According to this Code, inter-State migrant worker is anyone who moves from one State to another for employment, either through an employer or contractor, or on their own, and earns wages up to ₹18,000 or such higher amount as notified³⁶. The Code also includes the migrant worker under the definition of contract labour as a worker engaged through a

³⁵ Akhileshwari Reddy, "New Labour Codes: What Changes for Interstate Migrants?", Vidhi Centre for Legal Policy (25 November 2020).

³⁶ Occupational Safety, Health and Working Conditions Code, 2020 (Act No. 37 of 2020), s. 2(1)(zf).

contractor for an establishment. At the same time, it draws a distinction by excluding those who are directly and regularly employed by the contractor in a more stable arrangement, particularly where such employment includes ongoing benefits like wage progression, social security coverage, and other welfare provisions.³⁷

Occupational Safety and Health Protection

Despite its comprehensive structure, the implementation of the Code presents several practical concerns. One key issue arises from the increase in the threshold for applicability, which now covers establishments employing ten or more workers. Given that a large number of enterprises operate on a smaller scale, this change may result in the exclusion of a substantial segment of migrant workers, thereby limiting the reach of the law.³⁸

The Code places clear obligations on employers and contractors to ensure safe and suitable working conditions for migrant workers employed outside their home State. In cases of serious injury or death, authorities in both the source and destination States, along with the worker's family, must be informed. It also ensures that migrant workers receive benefits comparable to other workers, including access to social security and healthcare.

A travel allowance is provided to enable workers to periodically return to their native place, recognizing the realities of migration. The framework also promotes continuity in welfare access by allowing workers to avail Public Distribution System benefits in either their home or workplace State. It further supports portability of welfare benefits, especially in sectors like construction where mobility is high.³⁹ To improve accessibility, the Code introduces toll-free helplines for migrant workers. It also encourages research and data collection to better understand migration patterns. This focus on data aims to strengthen policy formulation and improve long-term implementation.

Challenges in Effective Implementation of the code.

This Code faces several practical challenges in implementation. As per the code, it raises the coverage threshold from 5 to 10 workers, unlike the Inter-State Migrant Workmen

³⁷ *Id.*, s. 2(m).

³⁸ *Id.*, s. 59, ch. XI, pt. II.

³⁹ Legal Rights of Inter-State Migrant Workers under the OSH Code, Corrida Legal, *available at*: <https://corridalegal.com/legal-rights-of-inter-state-migrant-workers-under-the-osh-code/> (last visited Mar. 26, 2026).

Act, 1979.⁴⁰ Since most establishments are small, many migrant workers are excluded, undermining the Code's broader protections and creating a contradiction in its intended benefits.⁴¹ The Code has failed to extend protections to intra-State migrant workers, whom tend to form the majority. According to the Census of India 2011, around 85% of migrants move within the same State. By excluding them, nearly 268 million workers are left outside the legal protection framework, missing a crucial opportunity for inclusive labour welfare. The Code assumes Aadhaar and smartphone access for registration, excluding many migrants where there is no comprehensive, updated database of migrant workers, which hampers policy execution and targeting of benefits.⁴² Government must ensure Aadhaar access and provide simple, offline registration alternatives. Overall, the effectiveness of these reforms by Labour Code, 2020 largely depends on robust implementation, administrative coordination between states, and increased awareness among workers.

Socio-Economic and Human Rights Dimensions

The strategic importance of gender-sensitive policy in migrant labour regulation cannot be overstated, as women represent a substantial and growing portion of this workforce. Data from the PLFS 2020-21 indicates a female migration rate of 47.9%, which is significantly higher than the male rate of 37.2%, highlighting that women are increasingly migrating for work rather than just for matrimonial reasons.⁴³ The "plight" of migrant women workers is multifaceted, involving not only wage discrimination where women are frequently paid less than their male counterparts for the same work, but also exposure to sexual harassment and a total absence of essential facilities. Despite the mandates of the ISMW Act, contractors rarely provide the required crèche facilities for the children of migrant women. This forces mothers to work in hazardous construction environments while their children face neglect or safety risks at the worksite, which is a direct violation of their right to a safe working environment.

Beyond immediate workplace hazards, the socio-economic dimension includes severe

⁴⁰ J. S. Majumdar, "Inter-State Migrant Workers Deprived of Labour Rights", *Peoples Democracy* (28 March 2021), available at: https://peoplesdemocracy.in/2021/0328_pd/inter-state-migrant-workers-deprived-labour-rights (last visited on 24 March 2026).

⁴¹ Akhileshwari Reddy, "New Labour Codes: What Changes for Interstate Migrants?", *Vidhi Centre for Legal Policy* (25 November 2020), available at: <https://vidhilegalpolicy.in> (last visited on 26 March 2026).

⁴² S. Irudaya Rajan & Anjana Rajagopalan, "Inter-State Migrant Workers in India: Policy for a Decent World of Work", *World Bank Blogs* (14 July 2023), available at: <https://blogs.worldbank.org/en/peoplemove/inter-state-migrant-workers-india-policy-decent-world-work> (last visited on 26 March 2026).

⁴³ Ministry of Statistics and Programme Implementation, *Migration in India 2020–21*, NSS Report (National Statistical Office, Government of India, New Delhi, 2023).

health and nutritional challenges. Women in the migrant labour force frequently suffer from malnutrition and a total lack of family support, which takes a significant toll on their mental health.⁴⁴ The absence of a social network in the destination state, coupled with the linguistic and cultural isolation, creates a state of perpetual psychological precarity. The COVID-19 pandemic acted as a catalyst that exposed the fragility of this social safety net. During the lockdown period, many migrant women domestic workers faced a "breadwinner loss" and were trapped in urban centres without the ability to work or return home due to travel restrictions.⁴⁵ Unlike workers in the formal sector, these individuals were generally excluded from contributory social insurance schemes, leaving them with no access to maternity protection or basic healthcare. Pandemic-era studies highlight that poor quality accommodation, already a human rights violation in states like Maharashtra have become life-threatening during the health crisis. The lack of social safety nets during this period demonstrated that welfare measures were "fully neglected" for migrant workers, highlighting a systemic human rights failure where the state was unable to protect its most mobile and vulnerable citizens.⁴⁶

Policy and Legal Solutions

The contemporary shift in labour governance involves a transition from "charity-based" welfare to "rights-based" empowerment. To address the gaps in the 1979 Act, the Indian government has introduced a series of schemes aimed at providing a comprehensive social security net. The effectiveness of these schemes depends heavily on the "Portability of Rights", the concept that social security must follow the worker across state lines. This domestic strategy aligns with the International Labour Conference Recommendation of 1919, which first advocated for equality of treatment between nationals and migrant workers and the coordination of migration policies between States.⁴⁷ In the Indian context, this requires a seamless integration of state-level welfare boards to ensure that a worker's entitlements are not extinguished by the act of crossing a state border.

⁴⁴R Belinda, "A study on migrant women construction workers in sub urban Chennai" (2010); Rahul P. Muragod & Santosh L. Patil, "A Study on Social Security and Welfare Schemes for Migrant Workers in India" 12 IJCRT (2024); Hugh Waddington and Rachel Sabates-Wheeler, *How Does Poverty Affect Migration Choice? A Review of Literature* (Working Paper, Institute of Development Studies, University of Sussex, 2005).

⁴⁵ UN Women, *Guidance on Women Migrant Workers and COVID-19* (2020).

⁴⁶ P. Kumbhar, "Expenditure on Social Security in India" (2014) *Indian Journal of Human Development*, pp. 123–140.

⁴⁷ Cécile Vittin-Balima, *Migrant Workers: The ILO Standards* (International Labour Office, Geneva, 2002).

Scheme Name	Target/Eligibility	Key Benefit/Strategic "So What?"
Pradhan Mantri Jeevan Jyoti Bima Yojana (PMJJY)	18–50 years	Provides life insurance of Rs. 2 lakhs; ensures family security in case of "breadwinner loss."
Pradhan Mantri Suraksha Bima Yojana (PMSBY)	18–70 years	Accidental insurance (Rs. 2 lakhs for death/disability) at a nominal Rs. 20/year premium.
PM Shram Yogi Maandhan (PM-SYM)	18–40 years; income <15k	Pension scheme providing Rs. 3,000/month after age 60; addresses old-age invalidity.
Pradhan Mantri Jan Arogya Yojana (PMJAY)	Unorganized sector	Rs. 5 lakh health coverage per family; removes medical care barriers.
One Nation One Ration Card (ONORC)	Migrant workers	Removes geographical barriers to food security; accessible via the "MERE RATION" app.
Affordable Rental Housing Complexes (ARHC)	Urban migrants	Provides "House for all" via repurposed government vacant houses; addresses accommodation quality.
PM Garib Kalyan Yojana (PMGKY)	Construction workers	Utilizes state welfare funds to provide financial assistance (Rs. 4,987 crores distributed).
Atmanirbhar Bharat Rozgar Yojana (ABRY)	Employers/Employees	Government pays EPFO contributions for two years to incentivize formal employment.
Atal Beemit Vyakti Kalyan Yojana (ABVKY)	Unemployed workers	Provides unemployment benefits once in a lifetime; mitigates job loss impact.
PM Street Vendor's Atmanirbhar Nidhi (PMSVAN)	Urban street vendors	Micro-credit (Rs. 10,000 loan) for informal urban economic actors.

PM Garib Kalyan Rojgar Abhiyan (PMGKRA)	Returnee migrants	125-day campaign to provide immediate employment and livelihood opportunities.
e-Shram Portal	Unorganized workers	Centralized database for social security delivery; intended to bridge the information gap.

These initiatives lie in their potential to transform the migrant from an “invisible unit” of labour into a recognized beneficiary of the state. For instance, the ONORC scheme, supported by the "MERE RATION" app, represents a technological solution to the geographical problem of food security, allowing 37% of the migrant population to access grain at any fair-price shop in India.⁴⁸ However, the implementation of these digital solutions faces the hurdle of the "Digital Divide." Many migrant workers, particularly those in the construction sector with low literacy rates, lack the smartphones or digital literacy required to navigate platforms like e-Shram or PMJAY. Therefore, institutional reforms must focus on creating physical touchpoints, such as community help desks modelled after the Tamil Nadu Construction Workers Welfare Board to bridge this technological gap. Strengthening the Inspectorial staff under Section 20 is also vital; the law must move from being a "complaint-based" system to a "proactive-inspection" system, where Inspectors are empowered to verify passbook issuance and wage parity in real-time at the worksite.

Conclusion

The socio-legal status of migrant labour in India remains a paradox of significant economic contribution coupled with profound regulatory neglect. Findings indicate that states like Maharashtra continue to host the highest share of migrants 19.07% of the national total, yet the awareness of welfare entitlements remains as low as 2% in key sectors.⁴⁹ The transition from the 1979 statutory framework to a modern rights-based economy requires a structural evolution of the law to meet 21st-century globalized labour realities.

To this end, three practical policy recommendations are proposed: First, the mandatory

⁴⁸ Department of Food and Public Distribution, Government of India, *One Nation One Ration Card Scheme: Integrated Management of Public Distribution System* (New Delhi, 2021).

⁴⁹ Kisan Algur, “Migration in Maharashtra: Trends, Patterns and Policy Issues” (2018) *Economic and Political Weekly*, pp. 44–52.

digital registration of all inter-state migrants through platforms like e-Shram, with a specific focus on the "Portability of Rights" to ensure social security follows the worker. Second, the strengthening of the Inspectorial staff under Section 20 of the ISMW Act, supported by specialized training in identifying "undocumented" migration and enforcing contractor liabilities. Third, the introduction of sector-specific protections for women, particularly in the construction and domestic sectors, to enforce the statutory provision of crèche facilities and ensure mental health support. Ultimately, the survival and dignity of the millions of workers who migrate for a better life are not merely a matter of administrative policy but a constitutional mandate that the legal framework must strive to fulfil to ensure national resilience.

