

## **Human Rights of Migrant Workers: A Critical Analysis of Legal Frameworks and Implementation Gaps**

**Paul Pankaj Kujur , Ankita Toppo**

**Department of Legal Studies Jharkhand Rai University, Ranchi**

**Email :- [pankusj@gmail.com](mailto:pankusj@gmail.com)**

### **Abstract:**

Migrant laborers in the sense of moving between states within India or going outside the country in the dusty Bihar villages to the shiny construction projects in the Gulf, represent both the hope and the danger of human mobility. Their work drives economies, remits money to families that keeps a whole family alive, but they are still one of the most overlooked and exploited groups in the world. This essay presents a critical human-centred examination of the legal structures that are created to protect their frights on the international and national level, and reveal the deep gaps in the implementation. The core of the international regime is the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW), which is supplemented by ILO Conventions 97 and 143, and the Global Compact for Migration of 2018. These tools offer non-discrimination, good salaries, safe working environments, and access to justice- rights based on the universal dignity established by the UDHR and the two Covenants. In India, there is a domestic shield in the form of the constitutional provisions of Articles 14, 21, 23 and the former Inter-State Migrant Workmen Act 1979 and its inclusion in the Occupational Safety, Health and Working Conditions Code 2020. However, as the 2020 pandemic and recent Gulf crises have shown in a tragically demonstrative way, these promises are often translated into bureaucratic silence and the watering down of policies.

This analysis, particularly of the lived experiences of workers in Bihar, one of the largest migrant-sending states in India, reveals systemic failures: the lack of ratification of core treaties, weak enforcement mechanisms, exclusion of the informal sector, and the asymmetry between sending and receiving countries. Weaving both legal commentary and the human experiences of dignity denied and resilience put, the paper makes the argument that it is not only a policy imperative to bridge these gaps, but also a moral obligation to treat migrant workers as rights-bearing persons, rather than disposable commodities. Migration can be turned into a dignified journey instead of a desperate one only with the help of ratifications, strong digital governance, and true interstate collaboration.

**Keywords :** Migration, Regularly, Critical, Contribution, Social, Employment, power.

### **Introduction**

Each year, millions of men and women in the Bihar heartlands put their modest baggage into the crammed trains or buses, motivated by the same quiet desperation of the few chances they have in home and a faint hope of a better life in other places. They abandon old parents, small children, and small parcels of land and become the unnamed workforce of Indian construction sites, factories and Gulf skyscrapers. Their remittances keep village economies afloat, and stock their national foreign-exchange coffers, yet these same workers are regularly subjected to non-payment of wages, risky working conditions, confiscation of their passports, and social ostracism. Their back journeys became a nationwide tour of human misery thanks to the COVID-19 lockdown of 2020; recent geopolitical unrest in the Gulf has only exacerbated the precarity. The paper is a critical analysis of the legal frameworks, both international and Indian that claim to safeguard the human rights of migrant workers but in fact, continuously reveal the gap between normative advocacies and realities. By using a human rights-based perspective based on dignity, equality, and non-discrimination, it places the analysis in the context of India as a prime country of origin of both internal and international migration. The specific focus is on Bihar, where the intergenerational migration patterns are characterized by the deep structural inequalities of caste, class and region.

The discussion process is carried out as follows: it first maps the international architecture, and then examines the Indian laws and their current consolidation in the four labour codes. It finds faults in the design, lacks of enforcement, and asymmetries in geopolitics and then provides pragmatic yet ambitious suggestions. This analysis concludes finally that the protection of migrant workers is not charity, but justice- a recognition that behind any statistic of economic contribution is a human being, whose basic rights are better than paper promises.

**International Legal Frameworks** The international legal framework of migrant workers is based on the initial assumption that human rights are universal and inalienable regardless of boundaries and immigrants status. Central to this is the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICMW, 1990), having entered into force in 2003 and, as of April 2026, having 60 state parties. This treaty broadly lists civil, political, economic, social and cultural rights including protection against arbitrary expulsion and violence (Articles 16 and 22) as well as equality in wages, social security and education (Articles 25-30). It is complemented by such fundamental instruments as the Universal Declaration of Human Rights, two International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, and two important ILO conventions: No. 97 (Migration for Employment, 1949) and No. 143 (Migrant Workers, 1975). The Global Compact on Safe, Orderly and Regular Migration (2018), which is a non-binding document, promotes rights-based governance, data-sharing, and ethical recruitment as well.

All these frameworks acknowledge that migration is not simply an economic exchange but a highly human experience that is characterized by vulnerability and resilience. To the Bihari workers who have to travel thousands of kilometres in search of dignity in labour, these instruments are in theory supposed to assure them of fair contracts, safe housing, emergency medical treatment, and the right to organise. They denounce the idea of migrants being considered as guest workers who lack personhood. But their power resides in their universality: they have been deployed regardless of consistency of condition, and claim that human dignity everywhere is harmed by exploitation. In a globalised world where labour mobility keeps alive the economies of origin and destination, these standards are the collective endeavour of humanity to civilise migration and avoid the downward spiral of migration into contemporary slavery.

**Critical Limitation** The high-sounding words of universality of the international instruments are vitiated by a growing weakness: the very low rate of their ratification, the asymmetry between sending and receiving states. The ICMW currently has 60 parties (primarily labour-sending developing countries) but key destination countries in the Gulf, Europe, and North America have notably avoided participation. Such selective engagement generates a structural protection gap, leaving millions of migrant workers including those of the villages of Bihar without the full protection of international law when they need it the most.

It is not just a numerical limitation but an ideological one. The destination states tend to favour bilateral memoranda of understanding, which put more emphasis on labour supply than on rights enforcement, which permits systems such as the kafala sponsorship model of the Gulf region to continue. In this type of regimes the mobility of workers is still tied to the employer, which encourages passport seizure, salary embezzlement, and forced labour- both of which the ICMW strictly forbids but cannot intervene unless the country is a signatory. India has not signed or ratified the Convention, but instead has been banking on domestic legislation and informal diplomatic talks. This hesitation, common among the major economies, is an element of a political calculation that considers migrant rights as less important than economic and diplomatic ones.

The human price is appalling: Bihar families who wait months without the pay, workers who go to hospitals with no insurance after suffering accidents in the workplace, and communities whose lives have been reduced to debt when they are suddenly deported. These constraints reveal the weakness of a rights regime that relies on the voluntary state consent. International law unless it is further ratified and reinforced is in danger of being mere aspirational rhetoric, which is not a living law. The real universality requires destination countries to receive the same standards like those they want their home countries to follow.

**Indian Legal Frameworks** The Constitution of India gives protection implicitly. The Supreme Court has broadened the scope of article 21 (right to life and liberty) to cover dignity, livelihood, and health (e.g., *Olga Tellis v. Bombay Municipal Corporation*). Articles 14, 15 and 23 forbid discriminations and forced labour. The policy of the state concerning welfare of workers is supported by the Directive Principles (Articles 39, 41, 43).

The main law to be applied to internal migrants was the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 (ISMW Act). It required registration of contractors, issue of passbooks, payment

of journey/ Displacement allowances, proper accommodation, medical amenities and equal payments. It was applicable to those places that employed five or more interstate migrants.

In 2020, the ISMW Act became part of four consolidated labour codes, becoming the Occupational Safety, Health and Working Conditions Code, 2020 (OSH Code). The OSH Code broadens the understanding of interstate migrant workers (including direct or through contractors) and portability of benefits through the e- Shram portal and National Database of Unorganised Workers. Nevertheless, it increases the number of 10 workers in a few instances, eliminates the explicit displacement allowance and cross-state inspection, and water-downs accommodation requirements.

In the case of international migrants, the Emigration act, 1983 (currently under review) and the bilateral MOUs with the Gulf countries, regulate the recruitment based on the e-Migrate portal. The Wages Earners Welfare Fund and skill development schemes do help to a certain degree but this is poorly enforced.

**Critical Evaluation of Frameworks** As much as the frameworks may seem strong in theory, they are flawed by design:

**1. Fragmentation and Dilution** With the consolidation of the labour laws in India into the four new codes, especially the subsumption of the Inter-State Migrant Workmen Act, 1979 into the Occupational Safety, Health and Working Conditions Code, 2020, a substantial amount of fragmentation and dilution has occurred. Some of the main protection mechanisms, including the compulsory displacement allowance, comprehensive accommodation requirements, and strong cross-state regulations, have been undermined or delegated to lower level regulations that remain to be properly announced. To a migrant worker in rural Bihar, this dilution does not just end up being technical but it translates to the loss of tangible promises that previously provided fragile sense of security during his/her long travels and uncertain jobs. What used to be a serious law that was exclusively concerned with interstate migrants, is now just a single chapter of a much bigger code that is mainly aimed at facilitating ease of doing business, at the cost of worker-oriented protection. Such a patchwork of legislation threatens to make such gains of protection, so painful to achieve, invisible in practice.

**2. Sending vs. Receiving Country Asymmetry** There is a huge asymmetry between India as a nation of labour sending and powerful countries of receiving, especially in the Gulf. On the one hand, India spends a lot of money on encouraging emigration to get remittances, and on the other hand, it has a weak diplomatic position to make sure that it is treated fairly in other countries. The kafala system of sponsorship, which remains common in most Gulf states, binds the legality of workers to their employers, allowing them to deprive workers of their passports, withhold their wages, and confine them to limited mobility. To the young men and women who have left the villages of Bihar, this imbalance can easily convert migration as a route to dignity into a rut of contemporary servitude. Bilateral MOUs can be helpful but are seldom binding like international conventions. This structural imbalance exposes Indian migrants to the most vulnerable place of all, the foreign soil, and underscores why multilateral involvement and the signing of safeguarding conventions are the most needed.

**3. Exclusion of Informal Sector** More than ninety percent of the migrant labor force in India works in the informal sector, and is largely out of the protective reach of current legal provisions. Although the Constitution guarantees and statutory provisions exist, because of the lack of formal registration, written contracts, and employer responsibility, the rights of most workers in the Bihar and other sending states are on paper only. They labor in small construction sites, brick kilns, domestic areas and unorganised factories to which labour inspectors do not have access regularly. To these invisible millions, the dream of decent work, social security and decent wages is still an illusion. This systemic marginalization keeps feeding a cycle of exploitation and deprives them of the very humanity that these legal structures purport to defend. To fill this gap, there is need to have innovative ground-level mechanisms that acknowledge the fact of informal employment instead of turning a blind eye to it.

**4. Gender and Vulnerability Blind Spots** The current legal frameworks have severe gender and vulnerability blind spots. Women migrants, especially of the marginalised groups in Bihar, risk being sexually harassed, underpaid, and denied the right to reproductive health more than others, although there are no particular safeguards in place. Equally, Scheduled Castes, Scheduled Tribes and Other Backward Classes are disadvantaged workers who are faced with caste-based discrimination overlaid on their migrant status. These overlapping vulnerabilities are seldom considered in the frameworks, and migrants are seen as a homogenous group. Beneath all these numbers of movement is the tale of a daughter, a mother, a Dalit labourer whose human dignity is twice raped. An actual human rights-oriented policy requires gender-sensitive policies, specific protection, and intersectionality that acknowledges that caste, class, and gender influence the migrant experience in the most significant respects.

**Implementation Gaps Gaps between law and practice** There are glaring gaps between law and practice:

Low Registration and Awareness Registration of migrant workers under programs such as e-Shram is appalling even though there are legal requirements to the same. Millions of village workers in Bihar migrate informally, and they are not aware of their right to portable benefits, healthcare, and social security. This informational and digital gap turns well-meaning legislations into far-fetched ideals, and leaves the vulnerable people without the very protection they are supposed to have. Back home, families are waiting anxiously as their beloveds continue to be unknown to the system that is supposed to protect them.

- **Enforcement Failures** Enforcement of the migrant worker laws remains at a very poor level. There is chronic understaffing, insufficiency of resources and at times collusion with contractors in the labour departments. Cross state coordination is minimal and the violations are not checked. When migrants of Bihar turn to the authorities, they are usually met with further harassment instead of relief, which cultivates a profound distrust toward the system and perpetuates exploitation on a large scale. Unresolved grievances have a human face of dignity that has been undermined by institutional apathy.
- **Destination Country Abuses** In the destination nations, especially the Gulf, Indian migrant workers are subjected to a systematic abuse of their rights, such as wage theft, seizure of passports, overcrowding and limited freedom of movement. Bihar has many young men and women who have to go through months of exploitations with little diplomacy. Such facts reveal the shortcomings of bilateral accords and necessity of more powerful international protection. What would be a hopeful journey turns out to be a silent suffering miles away.
- **The response of Crisis Response India to migrant crises is reactive and unresponsive.** The 2020 tragedy of lockdown showed that there were no strong emergency evacuation, financial assistance and reintegration procedures. Be it in pandemic times or Gulf war, workers are frequently left in limbo with no immediate help. This unpreparedness transforms the manageable crises into deep human sufferings of families who rely on the income of migrants. The human price of the lost lives and broken trust requires a much more proactive and humane solution.

## **Recommendations**

### **1. Ratify Key Conventions**

India must immediately ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) and the pertinent ILO conventions on migrant labour. The ratification would go a long way in enhancing India diplomatic standing and offer a strong international legal system to protect its nationals working in other countries. To the millions of young men and women of Bihar villages who lay everything on the line to get to a better place, it would be a step up the ladder of vulnerability to that of recognised international protection. It would send a message that India cherishes the dignity and the rights of its migrant workers as much as the remittances they make to their home. This would put the migrant protection on a level of global human rights responsibility rather than bilateral bargaining.

### **2. Strengthen Domestic Laws**

The government should reinforce the domestic law of protection by restoring some of the important safeguards that were watered down in the Occupational Safety, Health and Working Conditions Code, 2020. This involves registration as a matter of necessity, clear accommodation provisions, displacement allowance and effective interstate coordination arrangements. The needs of migrants in Bihar should be reflected in the formulation of laws, including their lengthy walks to work, unstable jobs and their family matters back home. Enforcement of these laws does not mean adding a load of regulations but about restoring the dignity and security to the workers who play a significant role in the economy but are among the most vulnerable. The legal framework that is migrant strong is necessary to transform the constitutional pledges to the ground protection.

### **3. Enhance Enforcement**

To ensure the gap between law and reality is bridged, good enforcement mechanisms are essential. This involves significantly adding the workforce of trained labour inspectors, having digital monitoring tools to track in real-time, and enhancing interstate coordination. Violations should be treated with strict penalties and the complete responsibility of the contractors as well as the employers should be in place. To a migrant employee in rural Bihar, the law can only be applicable when it can be accessed and enforced in a timely manner. Improving enforcement is thus an act of justice - it would turn the legal provisions into more than paper promises: it would turn them into real ones, guardians of human dignity, guardians against exploitation and migration into a stairway of hope and not a stairway of despair.

### **4. Cooperation with bilateral and regional partners**

India should go out of its way to enter into bilateral agreements and MOUs with key destination countries, especially the Gulf countries, which are more rights-based. They should work towards the reform of exploitative systems like kafala, payment of wages on time and meaningful access to justice by the workers. The collective advocacy of migrant rights could also be harnessed through regional cooperation, such as in the form of forums such as the SAARC or BIMSTEC. Behind all the figures of migration is the story of a father, son or daughter of Bihar in search of a better future of his family. Good diplomacy here is not only concerning economic interest but also safeguarding the human rights and dignity of the most vulnerable citizens of India when they are not at home.

### **5. Inclusive Welfare**

The welfare measures should be rendered really portable and inclusive. There must be complete inclusion of migrant workers in schemes like Ayushman Bharat, PDS and social security via the e-Shram portal. Pre-departure orientation, skill development programmes and gender-sensitive support systems must be enhanced, particularly of women and marginalised communities of the states such as Bihar. Migrants must not be made to make decisions between their rights and their livelihood. A comprehensive welfare strategy acknowledges them as equal citizens who deserve dignity, medical care, education of their children and social security, irrespective of their place of work. This is core to making sure that migration helps human development, as opposed to cycles of vulnerability.

### **6. Civil Society Role**

The civil society organisations, NGOs, trade unions and the academic institutions play a critical role towards the protection of the migrant workers. They are able to offer legal assistance, conduct sensitization in source states such as Bihar, check working conditions and reintegrating sent back migrants. Government and civil society cooperation can establish a more sensitive and humanistic protection ecosystem. The failure of the state mechanisms makes many migrants trust local NGOs. The empowerment of civil society is not a choice but a necessity it introduces compassion, bottom-up knowledge and responsibility to the system, and helps translate policy into a real-life difference in the lives of millions who abandon their homes in search of dignity and opportunity.

### **Conclusion**

The human rights of the migrant workers are at a crossroad where the noble promises of the law are violently coming into contact with the bitter realities on the ground. Although the vision of dignity, equality and protection is expressed in international conventions and Indian laws, the gaps in ratification, dilution of the laws, enforcement and political will persist to expose millions of workers to exploitation and indignity especially those living in the villages of Bihar. They are the workforce who construct cities, help families and enrich economies, but are too frequently perceived as disposable commodities instead of rights-bearing human beings. This critical reflection shows that it is not only the lack of law that is a problem, but the inability to turn legal promises into living securities. The imbalance between sending and receiving states, exclusion of the informal sector and invisibility of gender and caste-based vulnerabilities have led to a protection deficit that is very costly in terms of human, broken families, shattered dreams and lost dignity. Safeguarding migrant workers is not a form of charity, but an essential practice of justice in an ever more mobile world. It requires not policy adjustments, but spiritual bravery, political determination, and true faith in human decency. As a nation that sends many migrants to other parts of the world, India has a duty and has an opportunity to be a pioneer by actually signing major conventions, effective domestic policies and caring governance. It is only when the process of migration is no longer a journey of survival but a journey of dignity and opportunity we can emphatically say that the universal promise of human rights is being fulfilled. The millions of migrant workers who have been silent but strong voices, cannot be served with anything short of this transformative change.

## References

1. Bandyopadhyay, R., Banerjee, P., and Samaddar, R. (Eds.). (2022). *The pandemic and migrant workers in India*. Routledge.
2. Datta, A. (2024). *The process of migration and development in India: Bihar*. Routledge.
3. John, J., & Thomas, N. J. (2020). *An Indian research on social security and health rights of immigrant employees*. National Human Rights Commission (NHRC).
4. Kuttappan, R. (2022). *Undocumented: Indian migrants in the Arab Gulf*. Penguin India.
5. Mishra, D. K. (Ed.). (2025). *Internal migration, modern India (2nd ed.)*. Routledge.
6. Rajan, S. I. (Ed.). (2023). *Mega migration of students in India 2023*. Routledge.
7. Rajan, S. I. (Ed.). (2024). *Indian migration report 2024 India in Canada*. Routledge India.
8. Rajan, S. I. (Ed.). (2025). *Migration of Indians in the United States of America: India migration report 2025*. Routledge.
9. Rajan, S. I., & M, S. (Eds.). (2020). *Guide to internal migration in India*. Sage Publications.
10. Rajan, S. I., & Zachariah, K. C. (Eds.). (2012). *The Kerala experience of migration and remittances in India*. Routledge.
11. Ramaswami, S. (2024). *Souls in the Kalyug: The Politics and cosmologies of migrant workers in contemporary India*. The university of Pennsylvania press.
12. Ranjan, A. (2024). *The disadvantaged migrant workers in India during the COVID-19*. In *The pandemic and migrant workers in India* (pp. 45–68). Routledge.
13. Srivastava, R. (2021). *India Migration of labour: Policy issues, patterns and recent trends*. Institute of Human Development.
14. Kothari, U., and Srivastava, R. (Eds.). (2019). *Migration and development in India: challenges and opportunities*. Oxford University Press.
15. Varma, S. (2022). *Why the legal and labour system in India should be restructured to truly assist migrant workers*. In *Migrants and the pandemic in India* (pp. 145–162). Routledge India.
16. Gupta, S. (2023). *India: labour codes and migrant workers: critical analysis*. LexisNexis India.
17. Negi, C. (2020). *COVID-19 pandemic migrant workers human rights violations in India*. SSRN Electronic Journal.
18. Pandey, A. K., & Naik, A. (Eds.). (2011). *National conference on internal migration and human development in India*. Institute of Human Development and UNESCO.
19. Rajan, S. I., & Bhagat, R. B. (Eds.). (2022). *Migration and development: Indian viewpoints*. Sage Publications.
20. Singh, P., & Sahai, P. S. (2009). *India: Migrant workers waiting to be recognized and protected*. In *Migrant workers and human rights* (pp. 58–85). International Labour Organization (ILO) India office.