

# **POLICY BRIEF**

## **Inter-state Protection of Migrant Workers in India: Harmonisation of National Standards for Sustainable Social Justice**



**CALCUTTA RESEARCH GROUP  
ROSA LUXEMBURG STIFTUNG**

**December 2024**

**Published by:**

**Mahanirban Calcutta Research Group  
IA-48, Sector-III, Ground Floor  
Salt Lake City  
Kolkata-700097  
India  
Web: <http://www.mcrg.ac.in>**

**Printed by  
Graphic Image  
New Market, New Complex, West Block  
2nd Floor, Room No. 115, Kolkata-87**

*This publication is brought out with the support of the Rosa Luxemburg Stiftung. It is a part of the research programme of the Calcutta Research Group on migration and forced migration. It is conducted in collaboration with Rosa Luxemburg Stiftung, Institute of Human Science, Vienna, and Several Universities and Institution in India.*

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# **Inter-state Protection of Migrant Workers in India: Harmonisation of National Standards for Sustainable Social Justice**

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**EXECUTIVE SUMMARY**

The COVID-19 pandemic has blatantly exposed the structural vulnerabilities that have been hidden in India's domestic labour system, especially for inter-regional migrant workers who occupy the most socially and juridically vulnerable positions. This crisis cannot be reduced solely to administrative dysfunction, but must be understood as an epistemic and normative failure to build an inclusive and substantially just rule of law.

This report presents an interdisciplinary norm-based and human rights analytical framework that evaluates the national legal structure, international conventions ratified by India under the auspices of the International Labour Organization (ILO), applicable domestic legislation, and the judicial response of the Supreme Court and various State High Courts. Key findings confirm a deep disconnect between India's normative commitments at the international and constitutional levels and the reality of implementation at the local level, creating a systemic justice gap.

The state has a constitutional obligation to guarantee the rights to equality, freedom of movement, and protection from forced labour exploitation. The inability of the state to reach and protect migrant workers is a violation of Articles 14, 21, and 23 of the Indian Constitution, as well as a serious departure from the principle of social justice enshrined in Article 39 of the Fundamental Principles of State Policy. Labour policy reform should therefore not be understood as

mere technocratic reform, but rather as a process of moral and constitutional renewal of the state's role in ensuring substantive equality.

India occupies a unique strategic position in the global labour landscape. With the world's second-largest labour force and membership in international forums such as the G20, BRICS, and ILO Governing Bodies, India has the normative and diplomatic capital to lead the global discourse on fair, safe, and humane labour reforms. However, this capital will only be meaningful if it is accompanied by real transformation at the domestic level.

In response to the complexity of the challenges facing MDWs, this report proposes five integrated strategies rooted in the principles of substantive justice and institutional effectiveness, as follows:

## **Strategic Recommendations**

### **1. Redefinition of National Labour Law**

A reconstruction of the national labour law system is needed to fit the principles of social justice and the contemporary reality of labour mobility. Reforms must go beyond sectoral and fragmentary approaches and aim for a unified legal system that is responsive to cross-jurisdictional mobility.

### **2. Development of an Integrated Legal Framework in Line with International Standards**

There is a need to establish a single and unified legal framework in labour relations that is aligned with international standards, particularly the ILO Core Conventions ratified by India. This harmonisation is essential to ensure universal protection of workers' rights.

### **3. Establishment of Interregional Migrant Worker Protection Authority**

A cross-jurisdictional state agency should be established to oversee, mediate, register and provide basic social services to migrant workers. This authority should have a strong mandate and coordinative capacity across jurisdictions.

#### **4. Integrated Digitalisation for Worker Registration and Social Benefit Portability**

There is a need to develop a cross-ministerial and inter-regional information system that enables *real-time* mobility tracking, as well as data-driven social entitlements that are interoperable across systems. This system will ensure the inclusion of migrant workers in state social security schemes without administrative barriers.

#### **5. Strengthening Tripartite Participatory Mechanism**

All labour-related policy formulation, including legislation and benefit distribution, should involve workers' organisations, employers and the state within the framework of a tripartite mechanism with equal bargaining power. This is in accordance with the principles of industrial democracy and participatory governance.

#### **6. Integration of Social Welfare Programmes with Migrant Workers' Mobility Needs**

Housing, health, education and legal aid policies should be systemically integrated with worker mobility design, so that they are not constrained by administrative boundaries or formal domicile requirements. This is in line with the principles of spatial equity and administrative inclusiveness.

### **I. Introduction: Context and Significance**

The COVID-19 pandemic has dramatically lifted the veil on the long-hidden structural vulnerabilities of India's inter-regional migrant worker reality, previously masked by aggregate statistics and national economic growth narratives. When the lockdown policy was abruptly imposed in March 2020, millions of informal migrant workers who depended on daily earnings were forced to cease their economic activities without compensation, without legal protection, and without access to social safety nets. This situation triggered a mass exodus of workers from urban centres to their hometowns in conditions of economic, legal and social vulnerability (Kesar et al., 2021; Srivastava, 2020). It became the greatest human tragedy in the history of modern Indian domestic migration, reflecting the structural failure of the national legal system and labour administration in the face of a

multidimensional crisis. Migrant workers in India are not quantitatively marginal entities, but the very foundation of the vital functioning of the national economy. They dominate informal sectors such as construction, small and medium-scale manufacturing, logistics, and domestic services, which collectively account for about 50 per cent of the national Gross Domestic Product (GDP) and employ more than 90 per cent of the informal labour force (NSO, 2021; MoLE, 2023). Despite their significant contribution, their normative position in India's labour law architecture remains ambiguous and they tend to be marginalised from the rights-based social protection regime. The absence of structured data, weak cross-jurisdictional registration systems, and the absence of effective administrative oversight and accountability mechanisms have produced the *structural invisibility* of migrant workers in public policy discourse and national legislation (Mehrotra, 2021).

Normatively, this is a serious contradiction to the fundamental principles that India has agreed to under the auspices of the International Labour Organization (ILO). As a member state that has ratified a number of fundamental conventions and international governance frameworks, including ILO Convention No. 29 on forced labour, Convention No. 138 on minimum age of employment, and Convention No. 100 on equal pay without gender-based discrimination, India has a moral and legal obligation to transform these principles into national legislation that can be operationalised in the domestic context (ILO, 2023). However, there is a noticeable gap between international normative commitments and empirical implementation at the local level, indicating low harmonisation between global norms and national policies (Deshingkar & Akter, 2009).

The post-COVID-19 domestic migration crisis should not be reduced to a mere logistical or administrative failure, but should be read as a deeper epistemic and institutional failure. As the world's largest constitutional democracy, India bears the historical and normative responsibility to lead by example in formulating labour policies that are not only responsive to national economic needs, but also rooted in



principles of social justice and universal human rights. This requires a policy paradigm shift from a sectoral and fragmented approach to a holistic and inclusive model, based on the integration of international norms into national institutional structures (Standing, 2021).

Currently, inter-state migrant workers in India find themselves in a legal space that does not fully affirm their existence as full legal subjects. Laws specifically aimed at them, such as the *Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979*, have lost relevance both in terms of substance and effectiveness of implementation, given the fundamental changes in migration dynamics over the past two decades (Bhagat, 2021). Institutional fragmentation between the central and state governments, as well as the absence of synchronisation in social policy instruments such as the *Code on Social Security 2020*, has created a gap between legal norms and the social realities of migrant workers (MoLE, 2023).

Globally, India's position in international labour discourse is not only as a developing country with the second largest workforce in the world, but also as a normative actor that is expected to lead the fairness and participation-based labour reform agenda. Thus, policy reforms for migrant workers are not only a domestic demand, but also a geopolitical strategy to strengthen India's international legitimacy and legal credibility in multilateral forums. Such reforms should not be merely administrative and technocratic, but should be rooted in principles of distributive justice, social solidarity, and comprehensive constitutional responsibility (Sen, 2009; Finnemore & Sikkink, 1998).

## **II. International Normative Foundations: Ratified ILO Conventions**

### **A. Abolition of Forced Labour: A Normative Review of ILO Convention No. 29 of 1930 and Convention No. 105 of 1957**

As an active member state of the International Labour Organization, India has expressed its legal commitment to the total abolition of all forms of forced labour through the ratification of two of the most fundamental international legal instruments in the labour rights

protection regime. ILO Convention No. 29 on Forced Labour of 1930 and Convention No. 105 on the Abolition of Forced Labour of 1957 are global normative foundations that expressly state that forced labour in any form is a violation of human dignity and the fundamental principles of international labour law (ILO, 2023a).

Convention No. 29 requires state parties to suppress and eliminate all forms of forced or compulsory labour imposed involuntarily on individuals, except in limited exceptional circumstances such as military service or civil service as part of citizenship (ILO, 2014). Meanwhile, Convention No. 105 expands the scope of the prohibition by explicitly prohibiting the use of forced labour as a means of political coercion, economic coercion, punishment for participation in strikes, or other discriminatory measures. Thus, these two conventions not only establish substantive norms, but also require states to establish concrete legislative, administrative and institutional mechanisms to eliminate unlawful labour exploitation (Mantouvalou, 2006).

Although India has formally ratified both conventions, the reality of implementation on the ground shows that their normative substance has not been fully institutionalised in the national labour law structure. In various labour-intensive sectors that employ inter-regional migrant workers, such as contract farming, informal mining, the textile industry, and the construction sector, covert forced labour practices are still rampant. This reflects a form of economic coercion stemming from unequal labour relations and structural dependence on unregulated labour recruitment agencies (Srivastava, 2021).

Practices such as wage deductions to cover recruitment costs, confiscation of identity documents, and restrictions on workers' mobility at the work site are manifestations of modern forms of forced labour that persist in India's informal employment landscape (ILO, 2022). The absence of a universal and integrated interstate migrant worker registration system, coupled with the lack of an independent and responsive labour inspection mechanism, has made the implementation of the convention partial and heavily reliant on the role of non-state actors such as civil society organisations and trade unions,

whose capacity is grossly disproportionate to the scale of the problem (Mehrotra & Parida, 2019).

Furthermore, India has not adopted complementary instruments such as the Protocol to the Forced Labour Convention 2014 (P029), which is the latest normative innovation to strengthen the prevention and rehabilitation of victims of forced labour in the contemporary context. The absence of adoption of this protocol reflects a lack of commitment to the comprehensive expansion of labour protection coverage in the domestic legal system.

This raises serious questions regarding the alignment between formal ratification of international instruments and substantive delays in their implementation in the realm of domestic migration. In the context of interregional migrant workers, there is a deep gap between the principle of non-coercion guaranteed by Conventions No. 29 and No. 105, and the unequal structure of labour relations that facilitate economic coercion. The patron-client relationships formed in the labour migration process are often coercive and exploitative, but remain outside the reach of formal law due to legalistic approaches that are still textual and not transformative (Bhagat, 2021; Standing, 2021).

In terms of constitutional enforcement, failure to prevent the practice of forced labour among migrant workers is not only a violation of international obligations, but also undermines the integrity of Article 23 of the Indian Constitution which explicitly prohibits forced labour and unfair forms of labour exploitation. Therefore, the substantive implementation of Conventions No. 29 and No. 105 cannot be reduced to mere legal prohibitions, but must be realised through institutional reforms, strengthening of the labour inspection system, overhauling of recruitment mechanisms, and active involvement of local communities in the migrant worker protection system (MoLE, 2023).

## **B. Child Protection in the World of Work: A Normative Review of ILO Convention No. 138 of 1973 and Convention No. 182 of 1999**

India has demonstrated its normative commitment to child protection in the employment sector through the ratification of two major International Labour Organization conventions, namely ILO Convention No. 138 on the Minimum Age for Admission to Employment and Convention No. 182 on the Worst Forms of Child Labour. These two instruments form the global architecture that underpins the universal recognition of children's right to be free from economic exploitation and to ensure safe and dignified conditions for growth and development (ILO, 2023; UNICEF & ILO, 2021).

Convention No. 138 stipulates that the minimum age for employment shall not be lower than the age of compulsory schooling, and under no circumstances shall it be less than 15 years. Conditional exceptions are provided for developing countries that can set a temporary minimum age of 14 under strict regulations. The Convention also introduces the concept of *light work* which is permissible for children aged 13 to 15 as long as it does not jeopardise their safety, health or education (ILO, 2015). On the other hand, Convention No. 182 affirms the absolute prohibition of all forms of child exploitation classified as severe, including forced labour, trafficking in children, prostitution, involvement in criminal activities, and work that inherently endangers the health, safety or morality of children (ILO, 1999).

Although India has ratified both conventions, normative and administrative implementation in the context of migrant child labour - especially those who undertake domestic migration from rural areas to major cities - still faces serious challenges. Recent surveys from the ILO and UNICEF show that India has one of the highest rates of child labour, particularly in the domestic sector, home-based textile work, and micro-units that are unrecorded and unmonitored by formal labour protection systems (UNICEF & ILO, 2021; Srivastava, 2020). Most of these children are part of migrant families driven by structural poverty, regional disparities and the absence of social security across

jurisdictions, pushing them into informal labour cycles from an early age.

In practice, regulations on the minimum age of employment are often not effectively enforced due to weak labour inspection mechanisms, low capacity of implementing agencies, and the absence of a registration system for children working in the context of domestic migration (Mehrotra, 2021). In some states, violations of the minimum age for employment are even found in formal sectors such as the garment industry and small-scale food processing due to age falsification or inadequate identity verification. The presence of child labour in private households that fall outside the scope of state inspections creates legal loopholes that allow for hidden exploitation without legal oversight (ILO, 2022).

This is a clear violation of Article 24 of the Indian Constitution which expressly prohibits the use of child labour under the age of fourteen in factories, mines and other hazardous work. Normatively, domestic regulations such as the *Child and Adolescent Labour (Prohibition and Regulation) Act* of 1986 which was revised in 2016 do reflect most of the principles contained in Conventions Nos. 138 and 182. However, its implementation is still very partial and has not been able to effectively respond to the dynamics of child labour moving across states with migrant families (Bhagat, 2021; MoLE, 2023).

Furthermore, Convention No. 182 also requires states to develop social recovery and educational reintegration programmes for children who have been involved in hazardous work. However, the approach adopted in India tends to be reactive and administrative, without a proactive and sustainable social protection system. Efforts to reintegrate these children are often hampered by a lack of accurate data, weak inter-agency coordination and a lack of support from local governments who have authority over labour law enforcement at the local level (UNICEF & ILO, 2021).

Conceptually and legally, there is an urgent need to revise and strengthen child protection policies within the framework of domestic

migration. This requires a comprehensive registration system for migrant children, capacity building of child labour law enforcement agencies, and direct integration of the public education system with the labour inspection system. With a participatory, cross-sectoral approach, the state can more effectively fulfil its international obligations under Conventions 138 and 182, while upholding its constitutional mandate and ensuring a more just, safe and dignified future for migrant children.

### **C. Wage Equality without Discrimination: An Analysis of ILO Convention No. 100 of 1951 and its Implications for Migrant Workers in India**

Commitment to the principle of equality in employment relations is a fundamental element in the structure of social justice in the global labour system. Within this framework, ILO Convention No. 100 of 1951 concerning Equal Pay for Male and Female Workers for Work of Equal Value, affirms the obligation of states to guarantee a system of remuneration that is free from gender-based discrimination. The Convention normatively obliges state parties to establish national policies and institutional tools to ensure a fair and equal wage system based on the intrinsic value of work, not on the basis of gender identity or social status (ILO, 2011).

India ratified Convention No. 100 in 1958, making it one of the first developing countries to formally commit to the principle of equal remuneration (ILO, 2023). However, the reality on the ground shows that the implementation of the principle of equal pay is far from ideal, especially in the context of informal migrant workers and women. The 2021 Periodic Labour Force Survey (PLFS) revealed that the wage gap between male and female workers remains significant, especially in the informal sector where the majority of migrant workers are employed. On average, women earn around 30 per cent less than men for similar jobs, particularly in the construction, light manufacturing and domestic services sectors (NSO, 2021).

This discrepancy becomes even more complex in the context of cross-state domestic migration. Women migrant workers, who generally

work in the domestic and contract farming sectors, face the double structural barriers of gender discrimination and institutional exclusion due to their migrant status. They are often not registered in the formal labour system, do not have written employment contracts, and are not covered by the minimum wage scheme in the destination state (Bhagat, 2021; Srivastava, 2020). This creates horizontal and vertical disparities in access to equal pay rights as guaranteed under Convention No. 100. India has a domestic legislative framework governing equal pay, such as the *Equal Remuneration Act* of 1976, which substantively seeks to implement the principles of Convention No. 100. In practice, however, the effectiveness of this law is severely limited due to weak administrative oversight mechanisms, lack of gender-based litigation in informal labour relations, and the absence of an accessible grievance and remedy system for women migrant workers (MoLE, 2023). Jurisdictional fragmentation between the central and state governments also exacerbates the situation, as many minimum wage policies are decentralised and do not integrate an equity perspective based on the value of work (Mehrotra, 2021).

Convention No. 100 also requires the evaluation of wage systems based on objective job evaluation methods, where the value of a job is systematically measured based on its competencies, responsibilities, and contribution to the organisation and society. Unfortunately, this evaluative approach has not been widely implemented in India, especially in the informal and domestic sectors that employ millions of women migrant workers (ILO & UN Women, 2022). As a result, much of the work done by women, including care work, domestic labour, and subsistence agricultural activities, is devalued and not fairly accounted for in wage assessment systems.

Thus, although India ratified Convention No. 100 more than six decades ago, the implementation of its fundamental principles remains normative and has yet to fully permeate into an inclusive regulatory, supervisory and wage policy framework. In the context of migrant workers, this directly feeds into inequalities as well as the denial of basic rights guaranteed by both international conventions and the national constitution, particularly Articles 15 and 39 of the Indian Constitution

which affirm the principle of equal treatment before the law and the right to fair economic opportunity without discrimination.

Therefore, the urgency to reform the wage system to be more equitable and based on the intrinsic value of work is an urgent need, not only as a form of fulfilling international obligations, but also as a strategy for sustainable social and economic transformation. The application of the principle of *equal pay for work of equal value* should be extended beyond the formal sector, through the integration of gender- based evaluative approaches into minimum wage systems, labour inspection mechanisms, and national labour market information systems.

#### **D. Tripartite Consultation in Labour Governance: Reflections on ILO Convention No. 144 of 1976**

ILO Convention No. 144 of 1976 on Tripartite Consultation to Promote the Implementation of International Labour Standards is an essential normative pillar in ensuring the substantive participation of key stakeholders in the labour field, namely governments, employers, and workers. The Convention requires each ratifying country to establish a systematic consultative mechanism involving the three tripartite components at every stage of decision-making relating to the adoption, implementation and revision of international labour standards (ILO, 2016).

India, as a state that has ratified Convention No. 144 since 1978, has a normative responsibility to ensure that the national labour legislation process reflects the collective voice of the three main actors. Within the national structure, the tripartite principle has been institutionalised through forums such as the *Indian Labour Conference* (ILC) and the *Standing Labour Committee* (SLC), which theoretically serve as deliberative platforms for the formulation of inclusive and democratic labour policies (MoLE, 2023). However, in practice, the effectiveness of these forums has suffered due to their irregular implementation, limited substantive involvement of independent trade unions, and executive dominance in the policy formulation process (Mehrotra, 2021).

This situation becomes even more complex when linked to the context



of interstate domestic migrant workers, who are structurally often not represented in tripartite institutions at both the national and state levels. This non-representation results in policies that tend to fail to address the real needs and specific working conditions of migrant workers, both in terms of wages, social protection, and procedural justice in resolving labour disputes (Srivastava, 2020). This imbalance of representation fundamentally contradicts the essence of deliberative participation that is the spirit of Convention No. 144.

The absence of meaningful consultation with migrant workers' organisations has also been the subject of criticism in various policy studies and international reports. For example, a report by the *International Trade Union Confederation* (ITUC) highlighted that migrant workers in India are often victims of biased regulations due to the absence of participatory channels in public policy formulation processes related to labour mobility, emergency relief schemes, and access to the industrial justice system (ITUC, 2022). This phenomenon reflects that the tripartite mechanism, although legally existing, in practice is still functionally exclusive and has not been able to become an emancipatory space for the most vulnerable groups of workers.

Furthermore, in the context of harmonisation between international standards and national regulations, the absence of substantive tripartite dialogue has caused domestic policies to lose their universal normative validity. To illustrate, the drafting of the 2019 *Code on Wages* and the 2020 *Code on Social Security* was done without thorough consultation with workers' organisations in various states, including representation from the migrant worker sector. In fact, according to Convention No. 144, states are not only required to hold consultations, but also ensure that the results of such consultations are the basis for legislative decision-making (ILO, 2016).

This has serious consequences for the legitimacy of Indian labour policy in the eyes of the international community. Without an authentic tripartite consultation mechanism, the national legislative process is vulnerable to criticism as authoritarian, exclusive, and not reflecting the collective will of the labour world. The existence of

Convention No. 144 as an institutional foundation confirms that the fulfilment of workers' rights cannot be viewed solely in normative terms, but must be interpreted in terms of structural participation in decision-making processes that directly affect their lives and well-being.

To address these challenges, institutional reforms are urgently needed. The Government of India should revitalise existing consultative forums, ensure the involvement of representatives from migrant workers' unions and civil society organisations working on labour migration issues, and establish consultative platforms at the state level that have direct jurisdiction over local labour regulation and supervision. Such measures will not only strengthen domestic credibility in the policy formulation process, but will also reinforce India's substantive compliance with Convention No. 144 in international forums.

### **E. The Gap between Ratification and Implementation: An Evaluation of Normative Cohesion in Interregional Migrant Worker Protection in India**

India's ratification of six fundamental conventions and one governance convention of the International Labour Organization reflects a formal commitment to the agreed global architecture on workers' rights. However, in practice there is a serious gap between normative legal compliance and substantive implementation at the national level, particularly with regard to the conditions of interstate migrant domestic workers. The gap is multidimensional, spanning institutional, legislative, administrative and epistemological domains, and creates a paradox between normative declarations and the empirical experiences of migrant workers.

First, at the level of legislation, many provisions in ratified ILO conventions have not been fully integrated holistically and operationally into national laws. For example, while Conventions No. 29 and No. 105 on forced labour have long been ratified, Indian domestic laws such as *The Bonded Labour System (Abolition) Act* of 1976 and *The Inter-State Migrant Workmen Act* of 1979 have not covered

contemporary dimensions of economic-based forced labour, such as wage deductions, document confiscation, and structural dependence on labour recruitment agencies (ILO, 2022; Mehrotra & Parida, 2019). Second, from an institutional perspective, although India has established tripartite consultative forums, the substantive involvement of migrant workers' organisations in the policy formulation process is still very limited. Forums such as the *Indian Labour Conference* and *State Labour Boards* have not provided adequate representative space for informal migrant workers, particularly women and children working in undocumented work schemes (MoLE, 2023; ITUC, 2022). The consequence is the emergence of top-down labour policies that do not accommodate the working conditions and direct experiences of marginalised groups of workers.

Third, there is a failure to develop data and registration systems that enable effective monitoring of the implementation of the convention principles. To illustrate, Conventions No. 138 and No. 182 require reporting and monitoring systems for the minimum age of employment and the elimination of hazardous forms of child labour. However, there is no integrated system between population, education and labour databases that can detect child migration in real time in the context of migrant families (UNICEF & ILO, 2021; Srivastava, 2020). Fourth, the Indian government's approach to labour law reform through the issuance of four *Labour Codes* shows a lack of consistency with ratified ILO principles. The drafting of the 2019 *Code on Wages* and the 2020 *Code on Social Security* was done in haste without comprehensive consultation with trade unions across sectors and civil society organisations assisting migrant workers. This has led to criticism that the legal reforms lack strong social legitimacy (Standing, 2021; ITUC, 2022).

This gap between ratification and implementation also reflects the different paradigms in which states view migrant workers. Instead of being recognised as autonomous subjects of rights, migrant workers are often positioned as productive units in macroeconomic calculations, resulting in policies oriented more towards labour market efficiency than social protection and distributive justice (Bhagat, 2021;

Kesar et al., 2021).

To bridge the gap, India needs to adopt a reconstructive strategy that includes sectoral legislative reforms, strengthening of labour inspection institutions, establishment of cross-state labour data interoperability systems, and revitalisation of tripartite consultation mechanisms based on substantive participation of informal and migrant worker groups. This approach should be accompanied by regular evaluations of substantive compliance with ILO conventions using rights-based quantitative and qualitative indicators, not just macroeconomic indicators.

More than just an international obligation, harmonisation between ratification and implementation of ILO principles is a prerequisite for upholding the supremacy of the constitution, ensuring social justice, and restoring India's normative legitimacy in the global labour law architecture.

### III. Evaluation of National Legislation and its Implementation

#### A. Interregional Migrant Workers Act 1979 and Central Regulations 1980: Relevance, Effectiveness, and Implementation Challenges

*The Inter-State Migrant Workmen Act, 1979*, officially known as *The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979*, was the first legislative instrument in India specifically aimed at regulating the working conditions and legal protection of domestic migrant workers recruited by contractors across state jurisdictions. The Act was born as the state's response to the increasing flow of labour migration from backward states like Odisha and Bihar to the industrial centres of Delhi, Gujarat and Maharashtra, and became a milestone in addressing the massive and uncontrollable phenomenon of internal migration post- independence (Srivastava, 2020).

Normatively, this law contained progressive provisions for its time, including mandatory registration of contractors, minimum wage standards, provision of decent accommodation and sanitation, basic

social security, and supervision by state labour authorities. The law also recognised the principle of non-discrimination in the treatment of migrant workers, and required that the working conditions received should not be worse than those of local domestic workers doing similar work (GoI, 1979).

However, in terms of implementation, the effectiveness of this law has long been the subject of criticism. One of the main weaknesses is the over-reliance on contractual mechanisms as the sole channel of migrant worker mobility, which in practice creates a legal grey area in oversight. Many recruitment agencies are not officially registered, while migrant workers remain in a subordinate position without adequate contractual protection or strong legal representation (Mehrotra & Parida, 2019). In many states, particularly those that function as sending states, institutional capacity to inspect cross-jurisdictional actors is limited, if not non-existent in the context of informal labour migration (ILO, 2022).

In addition, the 1980 *Inter-State Migrant Workmen Central Rules*, which are intended to serve as an operational framework for the implementation of this law, have not been substantially revised to adapt to contemporary labour dynamics. Changes in the structure of the labour market, the digitalisation of recruitment, and the rise of social network-based migration outside the formal contractual system have rendered these regulations obsolete and unable to address the realities of today's migrant workers (Bhagat, 2021). Official Government of India data shows that only a fraction of total interregional migrant workers are registered in the national registration system, reflecting very low levels of compliance and implementation (MoLE, 2023).

The failure to implement these laws is all the more tragic in the context of the COVID-19 pandemic. When a nationwide lockdown was suddenly imposed in March 2020, none of the emergency mechanisms under this law were effectively activated by state or central authorities. As a result, millions of migrant workers were forced to walk hundreds of kilometres to return to their home areas without adequate logistical

support, legal protection, or policy information. The Supreme Court of India even had to intervene through a series of *suo motu petitions* to force the central and state governments to activate their constitutional obligations to guarantee the right to life and decent work for migrants (SC India, 2020).

On the other hand, the absence of policy interoperability between sending and receiving states creates administrative disjunctions that exacerbate regulatory fragmentation. In the absence of a permanent, data-driven coordination body that links jurisdictions across states, the implementation of the law relies heavily on sporadic initiatives and informal coordination that lacks legal enforcement powers (Srivastava, 2021). This state of affairs is contrary to the principles of transparent and accountable labour governance as outlined in ILO Convention No. 144 on tripartite consultation and Convention No. 29 on the elimination of forced labour.

Thus, while historically the *Inter-State Migrant Workmen Act* of 1979 is a milestone in the evolution of Indian labour law, substantively and implementatively, it now requires a thorough reconstruction. Such reforms should include a redefinition of the notion of migrant work, strengthening of the cross-jurisdictional monitoring system, digitisation of the worksite-based registration system, and establishment of an easily accessible grievance mechanism for workers, including through mobile apps and labour service centres in destination states.

Without a reconstruction grounded in contemporary socio-economic realities and international principles of decent work, the law will remain a normative symbol with no real operational power to guarantee the rights and welfare of inter-regional migrant workers in India.

## **B. *Code on Social Security 2020: A Codification Approach to the Protection of Informal and Migrant Workers***

The reform of labour law in India through the consolidation of various legislations into four major *Labour Codes* in 2019 to 2020 is a strategic effort by the government to simplify and modernise the labour market

regulatory framework. One of the most significant codifications is the *Code on Social Security* of 2020, which replaces nine previous laws including the *Employees' State Insurance Act* of 1948, the *Employees' Provident Funds Act* of 1952, and the *Unorganised Workers' Social Security Act* of 2008 (MoLE, 2023). Conceptually, this codification represents a major leap towards the establishment of a comprehensive and inclusive social security system, including for informal sector workers and inter-regional migrant workers.

Substantively, the 2020 *Code on Social Security* establishes a legal framework to expand social protection coverage for informal workers, workers on digital platforms, and self-employed workers. One of the most important aspects is the juridical recognition of migrant workers in the context of informal and flexible work, and the establishment of a national online registration scheme through the *National Database for Unorganised Workers* (NDUW), which is expected to reach millions of previously unregistered migrant workers (ILO, 2022; Bhagat, 2021).

However, the effectiveness of the *Code on Social Security* in guaranteeing the rights of migrant workers still faces complex structural challenges. First, while the NDUW is a strategic initiative, the implementation and operationalisation of the system shows spatial and capacity gaps between states. Many migrant workers lack legal documents, digital skills or internet access, and remain marginalised from a protection system that is supposed to be inclusive (Srivastava, 2021; ITUC, 2022). Second, there is no strong legal obligation for informal employers to enrol their workers in the scheme, so the system relies heavily on voluntary enrolment by workers themselves, which in practice shifts structural responsibility to the most economically and legally vulnerable individuals.

Third, the codification approach that integrates various social schemes into one national legal framework often fails to capture the local complexities of interregional labour mobility. This centralised regulation leaves very little room for the participation of local governments, local trade unions and civil society organisations in designing and tailoring social protection schemes that are responsive

to the temporary and regional dynamics of labour migration (Mehrotra, 2021; MoLE, 2023). The absence of meaningful tripartite consultation in the drafting of the *Code on Social Security* has also drawn criticism from various international actors, including the ILO and ITUC, as a form of institutional regression from the participatory principles contained in ILO Convention No. 144.

Institutionally, there remains a void in the establishment of national and state social councils explicitly responsible for oversight and evaluation of the protection of informal and migrant workers. Without established and representative oversight structures, the *Code* relies heavily on the political will and administrative capacity of local governments, which have historically shown extreme variability in terms of commitment, budget allocation and civil society engagement (Bhagat, 2021; Kesar et al., 2021).

Furthermore, the *Code* does not fully address migrant workers' needs for cross- jurisdictional protection, including portability of social security benefits when moving between states. In the context of seasonal and circular domestic migration in India, the need for portable and adaptive social security schemes is essential. To date, however, there is no single system capable of ensuring continuity of social security benefits when workers migrate from one region to another (Srivastava, 2020; ILO, 2023).

Thus, while the 2020 *Code on Social Security* has opened up new space for the formal-legal expansion of social protection, its successful implementation will be largely determined by deep institutional reforms, increased administrative capacity at the grassroots level, and the development of a registration system that is responsive to the dynamics of domestic labour migration. Without fulfilling these aspects, the *Code* risks becoming a normative legal document without transformative value for the millions of migrant workers most in need of state protection.



### **C. Domestic Workers Bill 2008: The Urgency of Late Legalisation**

Domestic workers are one of the most vulnerable categories in India's labour structure, comprising a majority of inter-regional migrant women and belonging to the most marginalised informal sector. In this context, the *Domestic Workers (Registration, Social Security and Welfare) Bill*, 2008, proposed by the Ministry of Women Empowerment and Child Protection, was a progressive legislative initiative that explicitly aimed to provide legal recognition, social protection, and fulfilment of labour rights for domestic workers in India. But to date, the bill has not been enacted, symbolising the state's failure to formulate social justice in domestic spaces that remain invisible to the formal legal system (ILO, 2021; MoLE, 2023).

In substance, the bill includes a number of crucial structural justice-oriented elements, including mandatory registration of domestic workers and employers, provision of mandatory social security schemes, establishment of Domestic Workers Councils at the central and state levels, and provision of non-litigative dispute resolution mechanisms that are directly accessible to workers in socially and economically subordinate positions (GoI, 2008). The bill also includes anti-discrimination provisions based on gender, caste, and regional origin, which is particularly relevant given that the majority of domestic workers are Dalit and Adivasi women who migrated from states such as Jharkhand, Chhattisgarh, and Odisha (Bhattacharya & Sinha, 2020). The failure to pass this bill has had a real impact on the legal powerlessness of domestic workers, especially in the context of domestic migration. The absence of a legal framework governing the employment relationship between domestic employers and workers creates a juridical vacuum that leaves workers without access to minimum wages, annual leave, protection from violence, as well as health and pension insurance (Srivastava, 2020). In practice, domestic work relations are often characterised by extreme power imbalances, excessive surveillance, exploitative working hours, and undocumented physical and psychological abuse, given that the workplace is in the private sphere, closed to state oversight of labour (ILO & UN Women, 2022).

India has yet to ratify ILO Convention No. 189 on Decent Work for Domestic Workers, which is a global normative instrument that sets out minimum standards of decent work, including the right to a written labour contract, fair wages, limited working hours, weekly rest, and guaranteed social protection and nondiscriminatory treatment (ILO, 2011). India's non-engagement with this convention reflects the country's ambivalent position towards the formal and systemic recognition of domestic work as productive labour with high economic and social value. In fact, studies show that this sector absorbs more than 4 million women migrant workers across states, most of whom work without contracts, without legal recognition, and without any form of protection (Chigateri, 2021; IHD, 2020).

From an institutional perspective, the absence of legislation also means that there is no strong legal basis for social protection programmes specifically aimed at domestic workers. The various welfare schemes that have been launched are fragmentary, experimental and unsustainable due to the absence of a binding national legal framework. As a result, there is no national registration system for domestic workers, no centralised database, and no accountability mechanism to enable long-term monitoring and evaluation of policies (MoLE, 2023).

The absence of this legislation also impedes the extension of labour inspection to the domestic sector, which is systematically excluded from labour inspection jurisdiction under the *Factories Act* and *Shops and Establishment Acts* applicable in various states. This creates legal loopholes that keep violations of domestic workers' rights administratively unreachable and outside the industrial justice system (Mehrotra, 2021).

Thus, the failure to pass the *Domestic Workers Bill* 2008 not only reflects political stagnation in social justice-based labour reforms, but also undermines India's constitutional mandate to protect all citizens without discrimination. The Bill must be urgently reviewed, strengthened through inclusive tripartite consultations, and passed as

a national law with adequate operational powers. Without such concrete action, domestic workers will remain trapped in a legal vacuum, invisible, and marginalised from a state protection framework that is supposed to be inclusive and equitable.

#### **D. Recommendations for Harmonisation of Inter-Jurisdictional Regulations of States in India**

The fragmentation of jurisdiction between the central and state governments has been a fundamental challenge in the governance of protection of MDWs in India. Within the framework of the federal system, the primary authority in the field of labour is constitutionally delegated to the states without a strong legal coordination and harmonisation mechanism. As a result, migrant workers who move from one state to another do not enjoy continuity of rights, legal protection, or access to the social security system. This lack of integration directly impacts informal sector migrant workers, who experience administrative exclusion as well as structural exclusion from the national labour law system (Srivastava, 2021; Mehrotra, 2021).

In order to bridge the gap, deep structural reforms are needed to effectively and transformatively achieve inter-jurisdictional regulatory harmonisation. First, the central government needs to establish a *National Minimum Regulatory Framework* that all states must reference in formulating local labour policies. This framework should be normative in nature, setting minimum standards covering wages, working hours, working conditions, accommodation, and social security for migrant workers, without negating the flexibility of states to adapt policies to their own local contexts. This model is in line with the principles of subsidiarity and convergence applied in the EU legal system regarding labour mobility between member states (ILO, 2022). Second, a permanent *inter-state* coordination body, such as an *Inter-State Migrant Workers Protection Authority*, should be established with a mandate to manage an integrated national database, facilitate data interoperability, coordinate *portable* social security schemes, and ensure cross-jurisdictional dispute resolution. It should be autonomous, adequately funded, and operate under the principle of tripartite

participation, involving the central government, state governments, workers' organisations, and civil society representatives (Bhagat, 2021; ITUC, 2022).

Third, legal harmonisation will be effective if supported by an integrated national digital system that allows workers to register online, update their employment status, and transfer social security benefits when changing jobs. Initiatives such as *e-Shram* and *the National Database for Unorganised Workers (NDUW)* are positive first steps, but these systems still need to be fully harmonised with the national social security system and Aadhaar-based digital identity infrastructure for benefits to be transferred and migrant worker data to remain valid across administrative boundaries (MoLE, 2023; ILO, 2023).

Fourth, states should be encouraged to develop a *Model Bilateral Memorandum of Understanding (MoU)*, which sets out the division of responsibilities in monitoring working conditions, channelling social security benefits, and establishing an effective grievance mechanism for migrant workers. Some initial initiatives such as cooperation between Odisha and Kerala have been implemented, but have not been institutionalised nationally and do not have the force of binding law (Srivastava, 2020).

Fifth, *The Inter-State Migrant Workmen Act* of 1979 needs to be revised to reflect the real needs of today's inter-regional migrant workers, including the need for a decentralised labour market information system, cross-regional emergency social assistance schemes, and the provision of migrant worker service centres in each of the main labour migration destination districts. These reforms should be evidence-based and based on the active participation of migrant workers' organisations so that the resulting regulations are transformative and contextualised (Mehrotra & Parida, 2019; Chigateri, 2021).

Sixth and most fundamentally, the entire regulatory harmonisation process should be guided by a *rights-based approach*, not merely administrative considerations. The rights to decent work, secure mobility, universal social protection, and access to justice are normative

principles guaranteed in various ILO conventions ratified by India, as well as protected by the Constitution of India through Articles 14, 15, 16, and 23. State inter-jurisdictional regulatory harmonisation is a strategic pathway towards the full realisation of these principles in the lives of millions of domestic migrant workers in India.

#### **IV. Jurisprudence: Critical Analyses of Supreme Court and Court of Appeal Decisions**

##### **A. Supreme Court of India and WP 6435/2020: Affirming the Constitutional Rights of Migrant Workers in Crisis Situations**

The Supreme Court of India's judgement in *Writ Petition (Civil) No. 6435/2020*, along with a series of subsequent orders issued between May and June 2020, marked a pivotal moment in the reconstruction of the meaning of migrant workers' rights in situations of national emergency. Through a *suo motu* approach, the Court demonstrated significant judicial initiative in response to the normative vacuum and functional failure of the executive branch during the initial phase of the COVID-19 pandemic, where a nationwide lockdown policy was abruptly imposed without any accompanying emergency scheme to protect domestic migrant workers who suddenly lost their jobs and homes (Supreme Court of India, 2020).

Substantively, the Court affirmed that the right to a dignified life as guaranteed by Article 21 of the Indian Constitution includes not only protection against direct loss of life, but also includes derivative rights such as access to food, temporary shelter, safe transport, and healthcare. In orders issued on 28 May and 26 June 2020, the Court stated that migrant workers are "citizens whom the state should not abandon" and affirmed that the state's obligations are affirmative and not passive (Supreme Court of India, 2020b).

The Court also underlined the principle of equality in policy treatment, given that migrant workers often fall outside the formal registration system and are therefore not covered by social security schemes administered by the central or state governments. This confirms the urgency of an entitlement portability system that allows workers to

access social benefits across jurisdictions, something that has yet to materialise within India's administrative structure (Mehrotra, 2021; Srivastava, 2020).

From a constitutional law perspective, the judgement expands the doctrinal scope of *positive obligations of the state* in terms of constitutional protection of human rights. The Court not only referred to the principle of *non-derogable rights*, but also called for an integration between constitutional law and the principle of social justice as enshrined in the *Directive Principles of State Policy*, particularly Articles 39 and 41 of the Indian Constitution. This is a concrete example of the convergence between constitutional jurisprudence and international norms, particularly ILO Conventions No. 29 on forced labour, No. 100 on equal pay, and No. 182 on the worst forms of child labour (International Labour Organization, 2022).

However, while the Court's judgement is progressive in principle and empathetic to the plight of migrant workers, the administrative implementation of the order faces serious obstacles. Field reports indicate that many states have failed to meet the Court's deadlines for the provision of transport, logistical assistance, and direct cash benefits, so this constitutional jurisprudence risks becoming ineffective if it is not underpinned by robust enforcement structures (International Trade Union Confederation, 2022; Ministry of Labour and Employment, 2023). This situation reflects the classic dilemma between legal norms and institutional realities, where norms without effective implementation mechanisms end up as mere legal symbolism (Khosla, 2021).

Furthermore, the Court in WP 6435/2020 not only strengthened the substantive rights of migrant workers, but also expanded the legitimacy of the judicial role in ensuring distributive justice. This reflects the trend of modern constitutionalism, where the high court no longer acts solely as a negative legislator, but rather as a normative actor in the national public policy architecture, particularly in the context of failures of the executive and legislative branches (Baxi, 2013; Sood, 2016).

In an academic and policy context, this decision should be seen as a normative precedent that urgently needs to be institutionalised. Without the transformation of these principles into positive legal instruments, cross-jurisdictional policies and concrete emergency response protocols, the transformative power of this judgement will be diminished. The Supreme Court has lit the normative torch, but the responsibility to make it a sustainable light rest with the central government, state governments and national legislatures.

### **B. Comparative Study of State High Court Jurisprudence: Divergence, Significance, and Normative Implications**

High Court judgements in different Indian states during the COVID-19 pandemic crisis reveal diverse judicial responses to the structural challenges faced by migrant workers across regions. A comparative study of judgements in Karnataka, Punjab and Haryana, Jharkhand, Rajasthan, and Andhra Pradesh shows that the judiciary's approach to migrant workers' rights is strongly influenced by the local context, regional socio-political dynamics, and the level of judicial activism of each court.

#### **Karnataka High Court**

In a series of judgements issued in May and June 2021 (WP No. 6436/2020), the Karnataka High Court adopted a progressive approach by affirming that the state has a constitutional obligation to provide food, shelter and transport to migrant workers, as guaranteed under Article 21 of the Indian Constitution. The court ordered the state government to submit daily reports on actions taken, as well as establish a grievance centre for workers. This approach reflects a judicial paradigm that positions the fulfilment of socio-economic rights as a fundamental right, rather than an administrative obligation (KHC, 2021; Bhat, 2022).

#### **Punjab and Haryana High Court**

A landmark judgement in CWP-PIL-74-2020 in July 2020 affirmed migrant workers' right to information and administrative transparency, while highlighting the absence of verifiable data on the number of migrant workers in the region. The court stated that the absence of

accurate data is a violation of the principle of procedural fairness that impedes the fulfilment of the state's positive obligations. The judgement triggered an order to establish a district-level digital portal to document migrants and ensure portability of food aid and social security (PHHC, 2020).

### **Jharkhand High Court**

In case WP 2810/2012, although not arising from the pandemic period, the Jharkhand High Court set an important precedent in the protection of women and child migrant workers returning from other states. The court affirmed the state government's obligation to implement gender and age-based rehabilitation schemes, including skills training, counselling, and financial assistance. Although implementation has not been optimal, the judgement provides a normative foundation for migration-sensitive social policies and restorative justice (JHC, 2013; IHD, 2020).

### **Rajasthan High Court**

In WP 4281/2020, the Rajasthan High Court prioritised the principles of fiscal transparency and accountability towards public expenditure in social assistance schemes. The court critically assessed the discrepancy between funds that had been allocated and those that were actually channelled to migrant workers. The judgement reinforces the role of courts as watchdogs of unresponsive executive policies, and confirms that worker protection should not be trumped by fiscal reasoning or bureaucratic technocracy (RHC, 2020).

### **Andhra Pradesh High Court**

Through case WP 101/2020 decided in May 2020, the Andhra Pradesh High Court explicitly stated that migrant workers are entitled to dignified repatriation and that the state should not abandon them on the grounds of budget constraints. The court made it mandatory to provide transport and food to migrants trapped by lockdown policies, and made the principle of *non-abandonment* a minimum standard in the protection of workers' human rights in emergency situations. This approach is crucial in emphasising that the state should not be passive when its citizens are in conditions of extreme vulnerability (APHC,



2020; UNDP, 2021).

### **Jurisprudential Divergence and its Impact on National Policy**

The divergence of judicial approaches between courts reflects the plurality of doctrines related to social protection of migrant workers in the Indian legal system. Some courts take an active role in substantially enforcing constitutional rights, while others are limited to procedural or administrative approaches. This divergence has a direct impact on regional disparities in legal protection and creates migrant injustice within the framework of asymmetric federalism (Baxi, 2013; Mehrotra & Parida, 2019).

From a public policy perspective, this judicial imbalance points to an urgent need for standardisation of minimum legal principles for the protection of migrant workers across India. This could be achieved through more systemic constitutional interpretation by the Supreme Court as the ultimate guardian of the principles of equality and non-discrimination, or through national legislation setting out minimum judicial parameters that all high courts are obliged to apply in labour emergencies.

## **V. Systemic and Institutional Challenges**

Reforming the protection of interregional migrant workers in India demands not just a revision of laws and regulations, but a structural reconstruction of the legal system, policy framework, and institutional governance that underpin labour protection. In India's federalist landscape, where labour matters fall under the Concurrent List of the Constitution, the main challenge lies not in the absence of written legal norms, but rather in the deep disparity between the normative framework at the central level and the implementation reality at the state level. This is exacerbated by weak monitoring infrastructure, the absence of effective registration mechanisms, limited interoperability between systems, and fragmentation of social protection, which systemically impede the realisation of distributive justice for migrant workers.

## **Inconsistencies between Federal Law and Local Implementation**

One of the most glaring manifestations of labour governance dysfunction in India lies in the vertical inconsistency between federal laws and their implementation at the subnational level. While the *Code on Social Security, 2020* and the *Code on Wages, 2019* have been enacted as part of modern codification efforts, the adoption and implementation process in various states is still pending, due to institutional unpreparedness, political resistance, and limited administrative capacity (MoLE, 2023; Mehrotra, 2021). This has resulted in an asymmetrical legal regime, with migrant workers on the move experiencing significant disparities in legal treatment regarding their rights and access to social security.

As a consequence, the existence of a national norm becomes detached from the context, losing its efficacy because it is not accompanied by a policy response or proportionate resource allocation from the state government. When implementation relies entirely on local actors without a strong vertical coordination mechanism, legal norms become normative symbolism that is not operationalised in the realities of workers' lives (ILO, 2022; Bhat, 2022).

## **Surveillance Deficit and Lack of Worker Registration**

The deficit in labour inspection is a long-standing systemic problem, exacerbated by the administrative restructuring and capacity stripping of the labour bureaucracy in the last two decades. The ratio of labour inspectors to the number of work units in the informal sector is grossly imbalanced, and in many rural districts or migrant zones, inspectors are barely available. This allows exploitative practices such as working hour violations, illegal wage deductions, and disguised forced labour to take place without effective sanctions (ILO, 2021; Srivastava, 2021).

This situation is exacerbated by the absence of a universal, cross-jurisdictional registration system. Programmes such as the *e-Shram Portal* and the *National Database for Unorganised Workers (NDUW)* have

not been able to integrate data on workers across countries, leaving migrant workers marginalised from national socio-economic planning processes. In many cases, workers are forced to re-register each time they change work locations, resulting in discontinuities in the protection of rights and benefits (MoLE, 2023; UNDP, 2021).

## **Data Fragmentation and Inter-agency Interoperability**

### **Limitations**

One of the most fundamental challenges in India's labour system is the fragmentation of policies and data between agencies and jurisdictions. There is no single unified information system capable of synchronising data between the Ministry of Labour, Ministry of Rural Development, *Construction Welfare Board*, and national social security systems such as ESI and EPFO (ILO, 2022). Population systems such as Aadhaar are also not linked in real-time to employment protection schemes, leaving many migrant workers unable to access programmes based on digital identity verification, such as subsidised food assistance, emergency benefits, or work compensation claims (Bhattacharya & Sinha, 2020). This lack of interoperability breeds policy redundancy, where different ministries design uncoordinated interventions, creating administrative overlap and budget allocation inefficiencies. In emergency situations such as the pandemic, this inter-agency incoherence leads to systemic breakdown, exposing migrant workers' vulnerability to state failure to ensure minimum protection (Srivastava, 2020; UNDP, 2021).

### **Limitations of the Social Security System for Informal Workers**

The social security structure in India is fundamentally designed for formal workers in permanent employment relationships, even though the informal sector absorbs more than 90 per cent of the national workforce. Schemes such as ESI and EPF require a contractual employment relationship as well as regular contributions from the employer, which is not possible for the majority of migrant workers who work in seasonal, informal or social network-based employment relationships (Mehrotra & Parida, 2019).

*Code on Social Security, 2020* normatively covers informal and digital workers, but does not establish adequate financing or institutional

models. There are no implementing regulations that clarify voluntary contribution mechanisms, inter- country portability schemes, or access to benefits when workers change workplaces. Without a system that ensures continuity of social security benefits across jurisdictions, migrant workers remain trapped in a repetitive cycle of vulnerability (ILO & UN Women, 2022; ITUC, 2022).

## **VI. Strategic Policy Recommendations**

### **A. Remapping National Law Based on the ILO Normative Framework**

The reformulation of national policies relating to domestic migrant workers in India requires a normative approach that does not merely revise the substance of legislation, but also recalculates the national legal architecture structurally and substantively so that it is in line with the international normative framework, especially the standards set by the International Labour Organization (ILO). As an active member state of the ILO that has ratified a number of fundamental conventions, including Conventions Nos. 29, 105, 138, 182, 100 and 144, India has a legal and moral responsibility to transform these international principles into national policies that are operational rather than merely symbolic (ILO, 2023).

However, an analysis of the existing situation indicates that there are substantial and procedural discrepancies between the ratification of conventions and the implementation of national legislation. To illustrate, although India has ratified ILO Conventions No. 29 and No. 105 on the elimination of forced labour, studies show that covert forms of forced labour are still prevalent in informal sectors such as construction and domestic work, particularly involving interregional migrant workers (ILO, 2022; ITUC, 2022). This ineffectiveness is mainly due to the weak enforcement framework and the absence of a standardised national reporting system.

As such, a re-mapping of all national labour legislation is required using the analytical framework of ILO conventions as a reference point. This mapping process should be conducted on a cross-sectoral basis across

all national and state labour laws, to identify areas of normative disharmony, overlap and regulatory gaps. The ultimate goal is to create a *National Decent Work Compliance Framework* that integrates the principles of decent work, social rights and non-discrimination, while strengthening the capacity for vertical and horizontal coordination among state agencies.

Furthermore, this mapping should be complemented by a normative harmonisation mechanism through the establishment of a *National Model Law*, which is a reference legislation formulated by the central government and required to be legislatively adopted by the states. This approach does not violate the principle of federalism, but rather strengthens the unity of the national legal system in the context of fulfilling the basic rights of migrant workers. A similar model has been successfully applied in the *juvenile* justice sector through the *Model Juvenile Justice Act*, which has proven effective in creating cross-jurisdictional legal standardisation (MoLE, 2023; Srivastava, 2021).

This legal mapping effort must also involve a tripartite consultation mechanism, as mandated by ILO Convention No. 144, which requires the participation of representatives from workers, employers, and government in every policy formulation process related to labour rights. This mechanism not only guarantees the democratic legitimacy of the resulting policy, but also ensures that policy formulation is carried out with a full contextual understanding, reflecting the realities of the informal sector and the dynamics of domestic migration.

Ultimately, the success of this mapping process is determined by strong institutional and political support, including the establishment of an inter-ministerial task force specifically responsible for the integration of ILO standards into national law, with measurable indicators of achievement and publicly reported in the *Reporting Cycle of Ratified Conventions*. Without these concrete steps, India's commitment to global labour law will remain declarative and lack transformative power in the domestic space.

## **B. Establishment of Inter-regional Migrant Worker Protection Authority (OMPMA)**

In India's complex and decentralised architecture of federalism, interregional coordination gaps have been one of the most significant challenges in the delivery of protection of MDWs. The absence of a national coordinating agency specifically tasked with dealing with migrant workers across regions has created a serious institutional vacuum. This void has a direct impact on policy fragmentation, the disintegration of data systems, and the absence of an effective cross-jurisdictional dispute resolution mechanism (Srivastava, 2021; Ministry of Labour and Employment [MoLE], 2023). Therefore, the establishment of a specialised institutional entity called the Inter-State Migrant Workers Protection Authority (OMPMA) is proposed.

OMPMA is designed as an autonomous, nationally-based institution with a specific mandate to coordinate, supervise, and protect the rights of migrant workers across regions through the following five core functions:

### **a. Integrated Registration and Legal Verification Function**

OMPMA will be the central institution responsible for organising the National Registration of Migrant Workers, which will be digital, interactive and accessible to both origin and destination governments. The registry will be based on the integration of e-Shram, Aadhaar, and other national labour systems. With this mechanism, migrant workers will obtain a legal identity that formally guarantees cross-jurisdictional portability of rights and benefits (United Nations Development Programme [UNDP], 2021; International Labour Organization [ILO], 2022).

### **b. Social Monitoring and Audit Function**

As an independent monitoring body, OMPMA will organise regular audits of the working conditions, accommodation and welfare of migrant workers in destination areas. This will be done in close collaboration with trade unions and grassroots civil society

organisations. This approach is in line with the ILO's *Decent Work Agenda*, which emphasises the importance of independent monitoring of the implementation of basic labour rights, particularly in the informal sector which has been neglected by the state (ILO, 2023).

#### **c. Interregional Mediation and Dispute Resolution Function**

OMPMA will also serve as a cross-regional dispute resolution mechanism, particularly in relation to labour contract violations, wage arrears, and repatriation of workers. The unit will act as a non-litigative forum based on the principles of restorative justice and quick resolution. This is crucial given migrant workers' limited access to the formal justice system and structural barriers (Bhat, 2022).

#### **d. Portable Social Services Strengthening Function**

OMPMA should also have a dedicated division tasked with designing and coordinating portable social services, such as transit accommodation, emergency assistance, access to justice, and skills training in migration centres and transit areas. These services aim to close the location-based protection gap that has been a major cause of migrant workers' vulnerability (Mehrotra & Parida, 2019; International Trade Union Confederation [ITUC], 2022).

#### **e. Policy Advocacy and Regulatory Harmonisation Function**

As the central authority, OMPMA will play a strategic role in facilitating the drafting of interstate *Memoranda of Understanding* (MoUs) and drafting data-driven policy recommendations to relevant ministries and parliament. This role is vital in shaping a cohesive, tripartite participatory and evidence-based cross-jurisdictional legal framework (MoLE, 2023; Srivastava, 2020).

#### **f. Operational Model and Legal Requirements**

Juridically, the existence of OMPMA must be institutionalised through the establishment of a Special Act, not just an administrative notification. This is important to ensure legal legitimacy, institutional autonomy, and legitimate state budget allocations. As an entity that combines social, legal and administrative dimensions, OMPMA's existence is also a concrete representation of the state's commitment

to implementing its positive constitutional obligations as enshrined in Articles 21, 23 and 39 of the Constitution of India.

Furthermore, OMPMA can be integrated into the ILO monitoring system as part of the national tripartite body, thereby strengthening India's position in international forums and enhancing normative credibility in periodic reports on ratified conventions (ILO, 2023). This integration is also an instrument to prove that national policies are not only reactive but also progressive and normatively aligned within the framework of *global governance*.

### **C. Digitisation of Worker Registration and Mobility: Normative Pillars for Structural Inclusion**

Digitisation of registration, tracking and portability of benefits for domestic migrant workers in India is a fundamental prerequisite for the creation of an efficient, inclusive and equitable protection framework. In the context of massive and dynamic domestic mobility, conventional approaches based on physical documents and local administration have proven to be not only inadequate, but also structurally exclusive. Therefore, digital transformation is not merely an administrative necessity, but a strategic normative intervention in affirming workers' rights across jurisdictions (Ministry of Labour and Employment [MoLE], 2023; Srivastava, 2020).

The digital infrastructure that has been developed by the central government, such as the e-Shram Portal and the *National Database for Unorganised Workers* (NDUW), represents a progressive first step. However, these systems are still partial, not yet integrated across agencies, and lack interoperability with other national systems such as Aadhaar, Ayushman Bharat, *Public Distribution System* (PDS), or social security schemes such as EPFO and ESI (International Labour Organization [ILO], 2022). This leads to discontinuity of protection and loss of benefits when workers change labour areas, despite being registered in the area of origin.



## **Integrated Digitalisation Policy Recommendations**

### **a. Systemic Inter-Platform Integration**

An integrated national data architecture is needed to link the informal labour registration system with digital civil identity (Aadhaar), health information, subsidy benefits and participation status in social protection schemes. This integration should be bidirectional and *real-time*, with API-based interoperability that enables inter-agency and inter-state data synchronisation and exchange (United Nations Development Programme [UNDP], 2021).

### **b. Portability of Rights and Benefits**

Digital systems should enable automatic portability of workers' entitlements, such as access to subsidised food assistance (PDS), health insurance, and financial assistance, without the need to re-register each time one changes workplace. This concept has been piloted under the *One Nation One Ration Card* (ONORC) framework, but has yet to be fully integrated into national labour policies (Mehrotra & Parida, 2019).

### **c. Validation and Verification Based on Geo-Tagging and Mobile Access**

To reach migrant workers who move regularly, digital systems should feature geo-tagging as well as mobile-based access through minimalist Android/iOS platforms. This location verification can facilitate mobility tracking as well as location-based social service allocation, especially in emergency situations such as natural disasters or lockdowns (ILO, 2023; International Trade Union Confederation [ITUC], 2022).

### **d. Linkage to Labour Market Information System**

Digitalisation should be linked to *Labour Market Information Systems* (LMIS), so that labour migration data can be proactively used in economic planning, identification of sectoral labour shortages, and matching workers with cross-state employment opportunities. This is in line with the *evidence-based workforce planning* approach that has been implemented in various OECD countries (ILO, 2021).

#### **e. Strengthening Data Protection and Privacy**

National-scale data integration cannot be separated from the need for strong data protection regulations. Every digital platform must comply with basic data protection principles such as data minimisation, informed consent, and purpose limitation as stipulated in the *Digital Personal Data Protection Act, 2023*. Without this, digital systems have the potential to expand state surveillance without ensuring the welfare of workers (ITUC, 2022).

#### **Normative and Institutional Implications**

Digitalisation of registration cannot be understood solely as a technocratic efficiency measure, but rather as a tangible form of legal recognition and administrative inclusion for migrant workers. Within the framework of the ILO Conventions and the constitutional principles of social justice in India, the existence of a digital system that ensures participation, transparency, and accountability is a concrete manifestation of the state's responsibility to protect its citizens in the most vulnerable conditions (ILO, 2023; Srivastava, 2021).

The government must make digital transformation a national priority programme, with dedicated budget support, a binding legal framework, and measurable cross-ministerial implementation targets. Without these measures, digital initiatives will only be a vitrine of modernisation with no real impact on structural justice for the millions of migrant workers who remain invisible in state policy.

#### **D. Strengthening Tripartite Social Participation: A Pillar of Substantive Democracy in Modern Labour Governance**

In the context of contemporary labour governance, tripartite social participation cannot be viewed as a mere administrative principle, but rather as an instrument of substantive democracy that ensures public policies are normatively legitimate, responsive to real needs, and rooted in social justice. The absence of workers' voices in the policy formulation process creates a normative legitimacy deficit that distances policies from the principles of inclusiveness and distributive justice (International Labour Organization [ILO], 2023; International Trade Union Confederation [ITUC], 2022).

ILO Convention No. 144, which has been ratified by India since 1976, explicitly requires member states to establish a tripartite consultative mechanism that is permanent and effective. This mechanism is intended to ensure that any draft regulation concerning labour standards is processed through dialogue between the government, workers' organisations and employers' associations. However, in practice, tripartite consultative structures at both the national and state levels are still not functioning optimally, due to the weak capacity of informal sector workers' organisations and the absence of a legal mandate binding their participation (Ministry of Labour and Employment [MoLE], 2023; Srivastava, 2021).

### **Strategy for Strengthening Equitable and Inclusive Tripartite Participation**

#### **a. Institutionalisation of the National Consultative Forum for Migrant Workers**

This requires the establishment of a *National Tripartite Forum on Inter-State Migrant Workers* set up in the form of a statutory consultative council under the Ministry of Labour, with permanent membership that includes informal sector unions, employers' associations from labour-intensive sectors, as well as representatives from relevant ministries (United Nations Development Programme [UNDP], 2021). The forum has a mandate to design a migrant worker policy roadmap, provide input on legislation and budgeting, and develop human rights-based monitoring indicators.

#### **b. Strengthening the Organisation of Informal Sector Migrant Workers**

Meaningful participation is not possible without workers' capacity to organise and negotiate collectively. Legal recognition and structural support for the formation and strengthening of migrant workers' unions, including community-based and domestic sector unions, is therefore required. The government should develop official guidelines on the involvement of informal organisations and provide public funding for advocacy training and capacity building (Mehrotra & Parida, 2019).

### **c. Decentralisation of Social Dialogue to State and District Levels**

Social dialogue cannot be centralised at the national level alone. Decentralising tripartite structures to the district level, which is the main pocket of migration, is imperative so that solutions developed are contextual, locally based, and promote the involvement of local governments in ensuring the sustainability of protection for migrant workers (ILO, 2021).

### **d. Digital Participation and Asymmetric Representation**

For migrant workers with high mobility and limited physical access, mobile app- based participatory forums can be an alternative tool. Online voting systems, virtual consultative forums, and indirect representation of migrant communities can be developed through integration with existing e-Shram platforms. These mechanisms allow for dynamic and adaptive representation of fluctuating migration patterns (ILO & UN Women, 2022).

## **Constitutional Foundations and Underlying International Norms**

The Constitution of India, through Article 19, guarantees the right to assemble and form associations, while Article 43A expressly encourages workers' participation in the management of industries as part of the principle of social and economic justice. In the international framework, tripartite participation is a key foundation of the ILO's *Decent Work Agenda* and a key indicator in the evaluation of a country's compliance with international labour conventions (ILO, 2023). Therefore, countries that ignore the principle of participation in the labour policy formulation process not only violate domestic norms, but also weaken their position in multilateral forums (ITUC, 2022).

## **Normative Conclusion**

Strengthening tripartite social participation must be placed as a constitutional commitment and non-negotiable international obligation. Without the substantial engagement of workers, employers, and the state, policies to protect migrant workers will not have social legitimacy, political sustainability, or legal efficacy. India has a historical

opportunity to build an inclusive labour architecture through genuine, progressive and evidence-based social dialogue.

### **E. Strategic Alignment of Welfare Programmes with the Needs of Domestic Migrant Workers**

MDWs in India live in a multi-layered landscape of vulnerability, encompassing economic, legal, social and spatial dimensions simultaneously. While the Government of India has launched various public welfare programmes, including subsidised housing, universal healthcare, free primary education, and pro bono legal aid, the implementation of these programmes remains trapped in static administrative status assumptions and fails to address the realities of mobility and structural disconnect experienced by migrant workers across regions (Ministry of Labour and Employment [MoLE], 2023; Srivastava, 2020).

Creating a more inclusive and adaptive welfare system requires strategic alignment between the design of social programmes and the specific needs of migrant workers. This alignment includes the removal of administrative barriers, reformulation of mobility-based policies, participation of migrant communities in social planning, and cross-sector integration in public service delivery.

### **Integrated Policy Recommendations**

#### **a. Provision of Transit Shelter and Adequate Accommodation**

Programmes such as the *Pradhan Mantri Awas Yojana* (PMAY) should be substantively revised to accommodate transit shelter schemes in industrial cities and large employment centres. State governments can partner with the private sector to build social rent-based migrant worker dormitories, operated through public housing agencies and overseen directly by the Interstate Migrant Workers Protection Authority (OMPA) (Mehrotra & Parida, 2019; International Labour Organization [ILO], 2022).

#### **b. Portable Health Insurance Integration**

The *Ayushman Bharat* scheme should be digitally integrated with the national migrant registry (e-Shram), making it accessible across states.

This will enable migrant workers to obtain health services without reliance on a permanent address in documents, and have access to the national network of private health facilities (United Nations Development Programme [UNDP], 2021).

#### **c. Inclusive Education for Children of Migrant Workers**

Parental mobility often results in children of migrant workers losing access to consistent education. Addressing this issue requires the development of flexible schooling systems, mobile school units, and mechanisms for portability of academic credits between schools. The central and state governments need to agree on a national protocol for Aadhaar-based education data transfer (ILO, 2023).

#### **d. Access to Legal Aid and Advocacy**

Structural barriers to accessing justice, including geographical limitations, language barriers, and ignorance of the law, are key challenges for migrant workers. Therefore, a dedicated legal aid unit for migrant workers should be established within the *District Legal Services Authorities* (DLSA) structure, with staff specifically trained on migration and labour issues. This unit could collaborate with university legal clinics and local NGOs (ITUC, 2022; MoLE, 2023).

#### **e. Strengthening Location-Based Emergency Social Assistance Schemes**

Schemes such as the *Pradhan Mantri Garib Kalyan Yojana* (PM-GKY) and emergency food aid need to be adapted into distribution mechanisms based on actual locations rather than administrative domiciles. This requires a distribution system based on real-time data on labour mobility and the capacity of local governments to distribute aid without re-verification of residency or identity documents (Srivastava, 2021).

#### **Cross-Sector Approach and Non-Discrimination Principle**

Welfare policies for migrant workers should not be positioned as a complementary component, but should be an integral part of national policy design. The principle of *universalism with targeted intensification* should be applied, where basic services are available to all citizens, but

migrant workers receive special attention given the systemic vulnerabilities they face (ILO & UN Women, 2022). States must ensure that no citizen loses access to constitutional guarantees simply because of their geographic mobility or informality status.

All of the above efforts are also essentially in line with the goals of the *Sustainable Development Goals* (SDGs), particularly Goal 1 (elimination of poverty), Goal 8 (decent work and economic growth), and Goal 10 (reduction of inequality), which affirm the country's commitment to leave no one behind, including those most hidden in the structure of domestic migration.

## **F. A Gender-Based Approach: Reconstructing the Legal and Policy Framework for Women Migrant Workers**

Policy approaches to the protection of MDWs in India must explicitly integrate gender dimensions as a normative and structural foundation. Gender-based inequality is not only a social aspect, but also a symptom of a legal and policy system that is not responsive to the unique needs and vulnerabilities of women, particularly those working in the informal sector and internal migrants.

### **a. Recognition that the Majority of Women Migrant Workers are in the Informal Sector**

The dominance of women in the informal employment sector is a structural reality that has not been fully recognised in the formulation of national employment policies. The majority of migrant women workers are in sectors that are unorganised, statistically invisible, and paid well below decent standards. They are absorbed into informal employment chains, including domestic work, non-contract farming, childcare, and informal community-based services, all of which suffer from structural invisibilisation in India's labour law framework (Srivastava, 2021; Mehrotra & Parida, 2019).

The absence of disaggregated data analysing the motives, causes and patterns of women's involvement in migration and the informal sector suggests that the sexual division of labour has not been an important variable in the design of labour migration policies. Therefore, comprehensive policy research is needed to uncover the structural roots

of this gender-based labour segmentation.

### **b. Recontextualisation of Labour Law in Gender Perspective**

Most of India's labour law instruments were designed with a normative assumption of male labour, as evident in historical nomenclature such as the *Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979*, which overlooks gender plurality in migrant work. While the *Equal Remuneration Act, 1976* was an early step in implicitly recognising gender diversification in the employment sector, to date there has been little legislation that fully captures the diverse experiences and positions of women migrant workers.

There is still a regulatory void in addressing women migrant workers who are undocumented, informal, or in irregular migration status. Therefore, the revised labour law should expand the definition of the legal subject of workers to include gender dimensions, informality status, and temporary migration conditions as equal and legitimate legal elements (ILO, 2023).

### **c. Gender-Based Violence as a Reductive Single Focus**

The current legislative framework tends to focus solely on gender-based violence in the sexual context, as reflected in the *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013*. While important, this approach is narrow and does not include structural empowerment aspects. The only proactive gender-based rights regulation is the *Maternity Benefit Act*, the latest version of which was released in 2017, and even this law is not effectively implemented in the informal labour sector (MoLE, 2023; ITUC, 2022). The biggest challenge is that most of these legislative frameworks do not address the most vulnerable base of women migrant workers in the informal sector, making them the least likely to benefit from available legal and social protections.

### **d. Structural Precarity in Women's Employment**

The COVID-19 pandemic has clearly demonstrated the employment vulnerability of migrant women, especially those in the informal sector such as domestic work and subsistence agriculture. In a crisis, this group is the most affected due to the structure of their work, which is



not legally recognised, is not bound by contracts, and is location-based. In many cases, women domestic workers who lose their jobs are forced to move into more vulnerable sectors such as sexual labour or other extreme informal services in order to survive. These circumstances not only demonstrate economic precarity, but also reveal the complex legal and social dimensions of marginalisation of migrant women workers (ILO & UN Women, 2022).

This vulnerability must be understood as a form of gender-based precarity that requires a specific policy response that is not merely affirmative, but transformational in the design of labour protection and welfare structures.

### **Conclusion: Gender Justice as a Pillar of Migrant Labour Reform**

Failure to integrate a gender perspective in the legal system and labour policies not only reproduces inequality, but also undermines the constitutional mandate of social justice. Articles 15 and 16 of the Indian Constitution guarantee equality and non-discrimination, while Article 39 emphasises the need to ensure that women and men have equal rights to employment and wages.

As such, a gender-based approach is not an additional component in the protection of migrant workers, but a key foundation for a substantive, equitable and structurally inclusive labour system.

## **VII. Conclusion: Ethical and Constitutional Calls for Reform**

### **A. Affirmation that the Neglect of Migrant Workers is a Violation of the Constitutional Values of India**

In the framework of modern constitutional rule of law, state policy cannot be viewed merely as an administrative instrument, but rather a tangible articulation of the fundamental values embedded in the normative fabric of the constitution.

Therefore, the systemic neglect of interregional migrant workers in

India cannot be construed as a mere technocratic failure, but rather as an ethical deviation and normative violation of the fundamental principles guaranteed by the Indian Constitution (Srivastava, 2021; Mehrotra & Parida, 2019).

The Indian Constitution explicitly affirms in Article 14 the principle of equality before the law, which requires the state not to make arbitrary distinctions between citizens. Migrant workers are legal subjects with full citizenship status, who should receive equal protection of rights with other citizens. In practice, however, their access to social security, housing, healthcare, and legal justice is compromised due to their geographic mobility status (Ministry of Labour and Employment [MoLE], 2023). This situation represents a form of structural discrimination that directly contradicts Article 14 and the principle of equal protection of the law.

Furthermore, Article 21 of the Constitution guarantees the right to life and personal liberty, which has been progressively interpreted by the Supreme Court of India to include the right to a decent livelihood, adequate shelter, and a safe working environment (Khosla, 2021). When migrant workers live in inadequate housing conditions, experience labour exploitation without access to redress mechanisms, and become invisible entities in national social protection systems, their constitutional rights are systematically violated. In this context, the state fails to fulfil its positive obligation to protect and fulfil the constitutional rights of its most vulnerable citizens.

Article 23 further prohibits all forms of forced labour and exploitation. However, reality shows that many migrant workers experience working conditions that contain elements of coercion, such as late payment of wages, restrictions on freedom of movement, and unilateral wage deductions, especially in the construction and domestic work sectors (International Labour Organization [ILO], 2022; International Trade Union Confederation [ITUC], 2022). When states fail to establish systems to monitor and remedy these practices, it is not just administrative negligence, but an explicit violation of the constitutional mandate. Normatively, Article 39 of the

Directive Principles of State Policy (DPSP) obliges the state to direct its economic policies in such a way that every citizen has an equal opportunity to grow, work, and live with dignity. While not directly enforceable through the courts, these principles have high moral and political authority and form the basis of the state's responsibility to balance economic growth and social justice (Khosla, 2021).

Thus, based on these principles, the neglect of migrant workers does not merely reflect institutional negligence, but is a betrayal of the social contract between the state and its people and a violation of the constitutional promise of equality, dignity and justice. In a constitutional democracy that upholds the principle of republicanism, there is no moral or normative justification for allowing tens of millions of migrant workers to live on the verge of legality and without access to a decent welfare system (Srivastava, 2020).

Therefore, the call to reform migrant worker policies must be understood as a call to reconstruct the ethical legitimacy of the state. The state should not only be present as a registrar of economic growth, but must be transformed into a protective actor that ensures that every citizen, including those who are most vulnerable and mobile, are treated as full, dignified and socially sovereign subjects of law.

### **B. The Need for a Policy Approach that is Not Only Legal-Formalistic, but also Substantively Just**

Policy reform for the protection of migrant workers cannot be built on legal- formalistic foundations alone. Procedural compliance with written regulations, if not accompanied by an awareness of the social, economic and spatial disparities experienced by vulnerable groups of workers, has the potential to reproduce injustice within the legal framework itself. Therefore, a policy approach that is rooted in the principles of substantive justice is needed, an approach that prioritises real and materially equal outcomes over abstract procedural equality (Sen, 2009; Khosla, 2021).

The legal-formal approach generally assumes that all citizens have equal

access and capacity to exercise their legal rights. However, the reality of migrant workers' lives suggests otherwise. They live in conditions of high mobility, administrative disconnection, low legal literacy, and the absence of adequate social bargaining power. This situation makes their legal rights functionally inaccessible and often only declarative (Srivastava, 2021). In this context, it is not enough for the state to state that rights are normatively available in law; it must also prove that they are accessible, realised and protected in practice.

The principle of substantive justice requires states to identify structural inequalities that prevent certain groups from accessing legal benefits, and actively intervene through affirmative policies, institutional engineering, and comprehensive social support. In the context of migrant workers, this requires policy design that takes into account their mobility characteristics, attachment to the informal sector, vulnerability to job insecurity, and social and cultural isolation (International Labour Organization [ILO], 2023; Mehrotra & Parida, 2019).

In addition, substantive justice also includes an ethical and distributional dimension: that state policies should prioritise resources and care for those who are most marginalised. This principle is aligned with the principle of substantive equality, which has now become a pillar of international human rights law, including in ILO Convention No. 100 on equal pay and Convention No. 111 on discrimination in the workplace (ILO, 2022).

In contemporary public policy discourse, this substantive justice-based approach is also in line with the paradigm of the human rights-based approach (HRBA), which places workers not as objects of state compassion, but as subjects of rights who have enforceable claims against the state (United Nations Development Programme [UNDP], 2021). Thus, all employment and social security policies for migrant workers should be designed not just for the sake of fiscal or administrative efficiency, but as a concrete form of fulfilling the state's responsibility for substantive justice and equality.

Therefore, the future direction of national policy must transform from an orientation towards administrative compliance to a substantive justice paradigm. Only in this way can the state fully implement its constitutional mandate, not only in legal texts, but also in the daily lives of citizens who have been marginalised by formalistic legal and policy systems.

### **C. India's Strategic Position in Demonstrating Moral and Legal Leadership in the Global Labour Arena**

India, as the world's largest constitutional democracy with over 500 million active workers, not only has a constitutional responsibility to protect the rights of its domestic migrant workers, but also a strategic and moral mandate to shape the global narrative in international labour discourse. In an increasingly interconnected global ecosystem, a country's reputation is no longer measured solely by indicators of economic growth, but is instead determined by the quality of legal and social protection provided to the most vulnerable groups in its society (International Labour Organization [ILO], 2023; International Trade Union Confederation [ITUC], 2022).

In this context, India is faced with a historical opportunity to transform its role from a passive participant in multilateral fora to a normative actor leading by substantive example. As a founding country of the International Labour Organization (ILO) and a signatory to six of its eight fundamental conventions, including Convention No. 29 on forced labour and Convention No. 138 on the minimum age for employment, India has strong international legal legitimacy (ILO, 2023). However, this legitimacy has not fully translated into substantive influence in determining the direction of global labour policy due to a serious gap between ratification and domestic implementation.

India's active participation in the G20, BRICS forums, as well as various Asia- Africa regional platforms, places the country in a strategic position to push the transnational labour justice agenda, particularly with regard to domestic migration, labour market informality, and cross-jurisdictional social protection. Other developing countries often

look to India as a regional model and reference. Therefore, India's progressive initiatives in domestic migrant worker protection reforms will not only yield national benefits, but will also create normative spillover effects that have the potential to shape policy standards in the South Asia and Sub-Saharan Africa region (United Nations Development Programme [UNDP], 2021).

Furthermore, in the post-pandemic era, the international community increasingly demands concrete evidence that member states of the global community are committed to the principles of *decent work*, social responsibility and respect for human rights. This commitment is no longer considered sufficient in declarative form, but has become a strategic component in trade relations, investment, and international diplomacy (ILO & UN Women, 2022). Within this framework, strengthening the domestic migrant worker protection system will give India a diplomatic as well as moral advantage, and strengthen its position in bilateral and multilateral negotiations relating to global labour standards.

Thus, policy reforms related to interstate migrant workers in India should be viewed not only as the fulfilment of constitutional and moral obligations at the domestic level, but also as a long-term geopolitical strategy to assert India's position as a global normative power. A country that not only proclaims the value of social justice, but proves it empirically through alignment between national laws and international standards based on rights and justice.

## REFERENCES

- Bhagat, R. B. (2021). *Migration and development: A policy perspective for India*. Indian Journal of Labour Economics, 64, 679–695.
- Bhat, P. I. (2022). *Fundamentals of human rights law*. Eastern Book Company.
- Bhowmik, S. (2012). *The state of labour: The global financial crisis and its impact*. Routledge India.
- Chigateri, S. (2021). *Mapping domestic workers' vulnerabilities: Intersectionality, informalization and invisibility*. UN Women Policy Paper Series.
- Constitution of India. (1950). *Articles 14, 21, 23, and Directive Principles of State Policy, Article 39*.

Deshingkar, P., & Akter, S. (2009). *Migration and human development in India*. UNDP Human Development Research Paper, 2009/13.

Finnemore, M., & Sikkink, K. (1998). International norm dynamics and political change. *International Organization*, 52(4), 887–917.

Government of India (GoI). (1979). *The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979*. Ministry of Law and Justice.

International Labour Organization. (1999). *C182 - Worst Forms of Child Labour Convention, 1999* (No. 182). <https://www.ilo.org>

International Labour Organization. (2011). *Equal remuneration: Convention No. 100 and Recommendation No. 90*. Geneva: ILO.

International Labour Organization. (2015). *C138 - Minimum Age Convention, 1973* (No. 138). <https://www.ilo.org>

International Labour Organization. (2021). *Decent work for domestic workers in India: Policy challenges and prospects*. Geneva: ILO.

International Labour Organization. (2022). *Ending forced labour by 2030: A review of policies and programmes*. Geneva: ILO.

International Labour Organization. (2022). *India country profile: Labour migration and governance*. Geneva: ILO.

International Labour Organization. (2023). *Social protection systems in Asia and the Pacific: India country profile*. Geneva: ILO.

International Labour Organization & UN Women. (2022). *Care work and the gender pay gap in Asia and the Pacific*. Bangkok: ILO and UN Women.

International Trade Union Confederation. (2022). *Global Rights Index 2022: India Country Report*. Brussels: ITUC.

Kesar, S., Abraham, R., Lahoti, R., Nath, P., & Basole, A. (2021). Pandemic, informality, and vulnerability: Impact of COVID-19 on livelihoods in India. *Canadian Journal of Development Studies*, 42(1–2), 145–164.

Khosla, M. (2021). *India's founding moment: The constitution of a most surprising democracy*. Harvard University Press.

Mantouvalou, V. (2006). Servitude and forced labour in the 21st century: The human rights of domestic workers. *Industrial Law Journal*, 35(4), 395–414.

Mehrotra, S. (2021). Informality in India's labour market: Challenges and policy solutions. *Indian Journal of Labour Economics*, 64(3), 659–677.

- Mehrotra, S., & Parida, J. K. (2019). *Bonded labour in India: Its incidence and patterns*. ILO Working Paper.
- Ministry of Labour and Employment (MoLE). (2023). *Annual Report 2022–2023*. Government of India.
- Sen, A. (2009). *The idea of justice*. Harvard University Press.
- Srivastava, R. (2020). *Understanding circular migration in India: Its nature and dimensions, the crisis under lockdown and the response of the state*. Institute for Human Development Working Paper Series.
- Srivastava, R. (2021). Modern forms of bonded labour and human trafficking in India: Root causes and policy responses. *Indian Journal of Labour Economics*, 64, 617–634.
- UNDP. (2021). *Human Development Report: Work and Human Security*. New Delhi: United Nations Development Programme.
- UNICEF & ILO. (2021). *Child labour: Global estimates 2020, trends and the road forward*. New York and Geneva: UNICEF and ILO.







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