

MAPPING THE HUMAN RIGHTS STATUS OF MIGRANT LABOURERS IN SIKKIM

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ABSTRACT

Sikkim is witnessing a large inflow of migrant labour from West Bengal, Bihar, and Assam. Higher wages for unskilled labour in the state, large opportunities for employment and shortage of local labour, lead to the massive influx of migrant labour to the state. The migrant labourers get much higher monetary wages than in their native places. But they work for longer hours and their real wages may be lower as they have to incur a higher cost of living in Sikkim on food, shelter and transport. They live in Sikkim on a sharing basis and have limited access to sanitation facilities and safe drinking water. Their working and living conditions expose them to several diseases. They have limited access to health services and their children do not have requisite access to education. They face language problems and face challenges against social integration in the state. The paper tries to map the human rights status of migrant labourers in Sikkim and argues that they enjoy very limited protection from labour laws. They are vulnerable and subjected to human rights violations. The research methodology which has been used in the present study is doctrinal and empirical. The researcher has primarily depended on secondary data. However, the data received from the in-depth interviews with 30 migrant workers working in the state of Sikkim have also been used for the study of the human rights status of migrant labourers in Sikkim. A total of 30 Migrant labourers in the hotel industry, construction sites and working as porters have been selected randomly from East Sikkim using convenience sampling. For this study, migrant labourers have been defined as those people who belong to lower income groups and have moved from their state of origin to another state, within the boundaries of India, in search of jobs that are expected to give them higher wages, better quality of life, and better facilities. The scope of the paper is confined to interstate migration into the state of Sikkim from the states contiguous to Sikkim.

Key Words

Migration, Human Rights, Labourer, Exploitation

Overview of Migration

Migration is a “process of movement of an individual from his place of birth to a new place of residence” Iyer, K. G. (Ed.) (2004). The conventional definition of migration is "the

relatively permanent movement of persons over a significant distance." The requirement of a permanent period and a significant period creates a definitional problem. Kok, P. (1999). Any change of residence beyond the village or town/city boundary qualifies a person to be classified as a migrant. Bhagat, R. B. (2016). In India, migration of labour can be a movement away from the labour's birthplace (or place of previous residence) but within the same district; it could be a movement from one district to another district within the same state; and movement from one state to another. Skeldon, R. (1986). Migration and regional disparities are strongly interlinked and the volume of migration within a given territory varies with the degree of diversity of areas included in that territory. It is an important mechanism of human development and normally leads to higher income, savings, and remittances with poverty reduction. Malhotra, N., & Devi, P. (2016). In India, the major drivers of internal migration are prevailing unemployment, a competitive labour market, and enhanced livelihood prospects in the destination state. Khan, A., & Arokkiaraj, H. (2021). Workers migrating within a country usually move from less developed regions to more developed ones. In India, there are significant inequities in the development of the various states. Sikkim has a higher level of development than Bihar and Bengal and Assam. Akinola, A. B., Krishna, A. K., & Chetlapalli, S. K. (2014). According to the 2011 Census, 3.5 million migrants had stated economic reasons for migration. The corresponding numbers for the 2001 and 1991 Census, respectively, were 2.2 million and 1.4 million. A new Cohort-based Migration Metric (CMM) developed in the Government of India's recent Economic Survey shows that annual interstate labour mobility averaged 5 million to 6 million people between 2001 and 2011. Nayyar, G., & Kim, K. Y. (2018). The National Commission on Rural Labour in India (NCRL,1991) estimates more than 10 million circular migrants in rural areas alone. These include an estimated 4.5 million interstate migrants and 6 million interstate migrants in India.

Nature and Pattern of Migration of Labour in Sikkim

Sikkim in north-eastern India is a small border state strategically located between China, Nepal, and Bhutan. Two decades of state-led investment in infrastructural development and private investment in hydropower and pharmaceutical industries have transformed Sikkim from a remote border state to a de-facto Special Economic Zone (SEZ) where incursions by private capital are masked under state-led development policies. Chettri, M. (2020). In Sikkim construction work (daily workers), Pharmaceutical Companies, Hotels, Power Projects, and Distilleries have generated various avenues for private employment in the state. Thus, the state of Sikkim becomes a preferred destination for migrant labourers. Migration

into Sikkim is more induced by push factors like penuriousness, unemployment, regional disparities, family movement, marriage, natural calamities, etc. Kumar, S., & Choudhury, S. (2021). Registration of labourers/workers is made compulsory for all categories of workers such as tailors, barbers, carpenters, beauty and health care workers, fitters, construction workers, travel guides, tour operators, drivers, photographers, workers in manufacturing, metalworking and fabrication industry, security etc. According to the data received from the labour department of the state of Sikkim the total number of registered employees in pharmaceutical companies, power projects, distilleries, hotels, and other establishments: is 27,933. Total number of registered employees in building and other construction work: 6514. Details of registered workers collected under Sikkim Labour (Rules & Regulation of Employment of Condition & Services) Act 2021: April 2021- March 2022= 76226. Most of the labourers working in different unorganised sectors come from Bihar and West Bengal. Mishra, S. (2018). The majority of them are engaged in the unorganised sector. Mitra, S. (2019). They get employment in the hotel industry or on construction sites. The hotel industry requires 24-hour service. During the season they do not get weekly off. In non-star-rated hotels, labourers do not get basic facilities. During the tourist season, the labourers are required to work even beyond 12 hours. They get meagre salaries though they may not be below minimum wages for example employees working in the front office without experience gets a starting salary from 7000-15000. There is gender-based discrimination among labourers, men labourers are preferred over women labourers owing to welfare laws related to women for example Maternity Benefit Act. The migrants into Sikkim are mostly engaged in low-wage positions for reasons that either the locals are unwilling or unable to do. Singha, K., & Firdos, S. (2021). The living conditions of seasonal migrant workers are even worse. The road construction workers have to sleep in tents and huts, often under freezing conditions. Shah, A., & Lerche, J. (2020).

Statutory Framework & Migrant Labour

Under the Constitution of India, Labour is a subject mentioned in the Concurrent List where both the Central & State Governments are competent to make laws subject to certain matters being reserved for the Centre in the circumstances of conflict of jurisdiction between the Centre and State. The Constitution includes several rights and protections for the welfare and security of labourers, who make up a significant percentage of the nation's population. It guarantees the treatment of the labour force in a fair and just manner. Articles 38 and 41 of the Constitution highlight the state's duty to promote social justice and ensure the well-being of workers. Article 38 directs the state to promote the welfare of the people by securing and

protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life. Art 39(d) of the Constitution of India talks about equal pay for equal work. The logical conclusion of the provision is that if the nature of duties is similar in nature all workers should be given equal wages irrespective of their sex. Article 41 requires the state to secure the right to work, education and public assistance in certain cases such as unemployment, old age, sickness and disablement. Article 19 of the Indian Constitution guarantees freedom of movement and freedom to settle anywhere within the territory of India as a fundamental right to all citizens. But the migrants face several barriers in terms of access to civic amenities, housing and employment, as well as restrictions on their political and cultural rights for reasons of linguistic and cultural differences. Bhagat, R. B. (2011). Apart from these provisions the protection and safeguarding of the interest of labour as human beings is enshrined in the constitution of India. Laws have been enacted fixing the hours and minimum wages of labourers. Various security schemes have been framed for the welfare of the workers, like the Trade Union Act 1926, the Minimum Wages Act 1948, the Employees State Insurance Act 1948, the Industrial Disputes Act 1949, the Industrial Disputes Decision Act 1955, the Payment of Bonus Act 1955, the Personal Injuries, (Compensation Insurance) Act 1963, the Maternity Benefit Act, 1967, Contract Labour (Regulation and Abolition) Act 1970, Bonded Labour Systems (Abolition) Act 1976, Equal Remuneration Act 1976, Interstate Migrant Workmen (Regulation of Employment) Conditions of Service Act 1979, The Child Labour (Prohibition and Regulation) Act 1986, etc. However, these labour laws and policies apply to workers in the organized sector only. The state of Sikkim has also passed various legislations like Sikkim Building and Other Construction Workers Rules, 2010, Sikkim Labour Protection Act 2005, and Sikkim Labour Protection Rules 2006, Inter-State Migrant Workmen (Regulation of Employment and Condition of Service) Act, 1979. The Sikkim Shops and Commercial Establishments Act, 1983. The Sikkim Labour (Regulation of Employment and Conditions of Service) Act, 2021.

Thus, there is no dearth of laws for the protection of labourers in an organized sector but as has been the case migrant labourers are unorganised and thus there is a legal vacuum regarding the protection of their rights. There are widespread reports of domestic workers being underpaid, overworked, and abused by their employers. They are not recognized as formal workers under Indian labour laws, which means they do not have access to basic rights such as minimum wages, social security benefits, and protection against exploitation and abuse. Migrant workers are confronted with a wide range of problems. These include

non-provisioning of entitlements of government schemes, poor access to available schemes and services, inadequate and inappropriate safeguards at worksites, poor quality of accommodation, long working hours, low wages compared to local workers, limited access to health care services, social exclusion, poor social interaction and lack of integration with the local community. Employment of migrant workers predominantly takes place through informal channels that lead to the compounding of the marginalization of migrant workers in the destination states. First, due to their status as migrants- often unable to speak the local language and integrate into local customs- and second, due to the informal nature of their employment, leaving them subject to harassment and dire working conditions. The absence of ration card portability results in migrants being excluded from the Public Distribution System, the entitlement to which warrants domicile requirements. Social security issues of unorganized labour are of cardinal significance and such labour is much more vulnerable to exploitation than those in any organised sector. Manoj, P. K., & Viswanath, V. (2015). "Hospitals are difficult to access, schools impossible; children sometimes accompany parents to insecure work sites and begin working themselves". Shah, A., & Lerche, J. (2020). The interstate migrant workers, are generally illiterate and in search of livelihood and are not in a position to bargain with contractors and the contractors take advantage of their helplessness, the contractors put such type of terms and conditions in the form of standard form contracts that are against their interest.

The International Labour Organisation (ILO) has frequently highlighted that migrant workers furnish an often-invisible subsidy to national economies and contribute to a wide range of basic needs, often for low wages and with little recognition of the value of their contribution. Pattanaik, B. K. (2009). They are equally entitled to human dignity. Once we bestow human dignity on migrant labour. They become entitled to all human rights. But migrants remain on the periphery of society, with few civil rights and no political voice in shaping decisions that impact their lives. Deshingkar, P., & Akter, S. (2009).

Migrant Labourer from the Lenses of Human Rights

Migrant labourers become vulnerable to exploitation from the time they leave their place of residence. Kumar, N. A. (2011). They face several issues and challenges at their destination. The living and work conditions of the migrant workers are severely compromised. Baid, N. (2021). Long and flexible working hours, coupled with low wages are reported in the case of most seasonal migrant workers. Salve, W. N., Apartment, S. P., & Shripadnagar, I. (2009). It is a matter of debate whether labour rights are human rights. This question has generated interest in recent years among academia, lawyers, philosophers, social scientists, and policy

framers. There is a difference of opinion amongst various stakeholders of human rights and Labour rights, some consider labour rights as human rights, while others have different views on the matter. Mantouvalou, V. (2012). The main functions of the I.L.O. are to establish international labour standards; to collect and distribute information on labour and industrial conditions, and they must provide technical assistance in labour-related issues. Parmar, O. P. (1981). Labour rights are intricately connected with human rights. It has been realized that unless the activities of ILO are pursued with respect for human rights, they will not be able to provide a sound foundation for social and economic prosperity. Parmar, O. P. (1981). The activities of the I.L.O. in the field of human rights are guided both by the Universal Declaration and the two covenants on human rights. The Universal Declaration and the covenants provide a framework for the protection of the rights that can free man from fear and want. Thus, the universal declaration of human rights and the two covenants namely. The International Covenant on Civil and Political Rights and the International Covenant on Economic and Cultural Rights protect the civil, political and economic rights of migrant workers. Van Boven, T. (1995). Adams and others have argued that workers should not be viewed as economic interests, but rather as bearers of fundamental human rights. Savage, L. (2008).

Conclusion and Suggestions. Migration is not a choice but it is a necessity. Though migrant labourers makes enormous contributions to the economy in construction, hotel industries, porters etc. Their contributions to economic growth and development largely remain neglected. Payment of wages is against the statutory violation. The violation is mostly regarding the period as provided in the Payment of Wages Act. Women migrant labourers are subjected to wage discrimination they are the last preference of the employers. They are vulnerable and are subject to exploitation and Human rights violations. The labourers have to work beyond the prescribed period without providing them time for rest as provided under the I.L.O conventions. The labourers who are in the lactation period are the biggest sufferers in this regard.

The Migrants are outsiders in other States, they do not vote and thus cannot put governments under electoral pressure. All migrant labourers should be provided with the benefits of the Public Distribution System (PDS) so that they are not forced to buy food grains and kerosene at higher prices. The remuneration to interstate workers shall be deposited in their bank accounts and not in cash by the contractors. The authorities in the native place of the migrant labourers should keep track of the socio-economic conditions of the migrant labourers. The government should take the requisite steps to educate migrant

workers about their rights and obligations. Authorities must enforce strict measures or laws to ensure safe and secure working conditions for workers. The respective governments while framing policies related to workers or labourers shall take into account the vulnerability of the migrant workers also.

Notes

The factors in the origin state that form the basis for people to migrate to another state are known as Push factors while the factors in the destination state that attract people to it are known as Pull factors.

1. Unorganised labour refers to those workers who have not been able to organise themselves in pursuit of their common interests due to certain constraints like the casual nature of employment, ignorance and illiteracy, small and scattered size of establishments, etc.
2. In *People's Union of Civil Liberties and Anr v Union Of India and another* (2014), the Court in a single breath articulated a life with dignity in terms of both the minimum standards for a dignified existence and the maximalist standards that would make a person's life meaningful and worth living.
3. In *Francis Coralie Mullin v Administrator, Union Territory of Delhi and Ors* (1981), one of the early cases that brought dignity into focus in Indian jurisprudence, the Court unequivocally stated that any deprivation of human dignity would constitute a violation of the right to life.

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