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# **Policy Report**

# **Social Security for Migrant Labour in India: An Overview**

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**About the Organisation:**

LexQuest Foundation (LQF) is an independent, non-profit, research and action organisation, established in 2014, in New Delhi. We are striving to create, advocate and implement effective solutions for a diverse range of development issues.

To endorse participative governance, we engage with a broad spectrum of stakeholders, from various sections of the society, to ensure that policy-making remains a democratic process. We utilize pragmatic and futuristic research to disseminate actionable knowledge to decision-makers, experts and the general public. Our key activities include capacity and skill-building workshops, policy advisory programs, public outreach, and stakeholder consultations. We collaborate with the government, other organizations and individuals for impactful policy formulation and execution.

By employing sustainable and equitable solutions through our multidisciplinary, intersectional initiatives and programs, we are constantly working towards creating empowered communities.



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## Background



Image Sourced from Bengaluru Citizen Matters

As stated by the United Nations, nearly **one-third of the Indian population is migrant**. Half of this population has migrated from rural areas to urban areas in search for better socio-economic conditions. The act of migration helps these workers with exploring more employable skills, increasing their income and providing them with better essential services such as health and education. Essentially, as per the **8th sustainable development goal** of the United Nations it can be said that the purpose behind the migration is to find “decent work.” On the flip side, **migrating from their hometown to an urban area in search for better opportunities puts them in a vulnerable position where they are forced to fend for themselves in less than substandard working conditions and subject to being exploited for very little money**. The lack of decent work, hence leads to deprivation or exclusion of this demography. Many migrant workers who engage in seasonal work are often trapped in debt or



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bondage. The contractors or employers coerce such vulnerable workers to provide services without adhering to the minimum wage law as stipulated by the government. In order to ensure decent livelihood and standard of living of such a huge chunk of the population, the need to have a sturdy legislation upholding their rights is of utmost importance for the overall development of the economy.

According to the Directive Principles of State Policy of the Indian Constitution, the **state is required to secure for the citizens of all genders the right to an adequate means of livelihood, equal pay for equal work, protection against abuse and exploitation, protection of their and their families health and strength.** These principles are put in place in order to ensure just and human conditions of work. However, considering the predicament of migrant workers in the present day, it is clear that this principle needs to be backed by specific legislation and policies for it to be upheld seriously across the country.



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## Analysing the Current Policies



Image Sourced from MIG

Migrant workers continue to face endless issues choosing to work in different States and cities, especially since they are mostly employed by the unorganized sector. They are forced to live and work in unsanitary conditions and dangerously polluted environments which makes them vulnerable to fatal health issues. Most of them find employment in quarries, construction sites, mines and highway projects, which force them to live in hazardous environments, making them susceptible to air and water pollution which in many cases lead to kidney and lung disorders. Living in open spaces or makeshift shelters leads to a massive degradation of decent living standards. The children of those migrating along with their families are often **deprived of free and**



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**subsidised educational facilities offered by the State of residence.** This in turn, renders the children of migrant labour susceptible to exploitation as child labourers.

**Interstate Migrant Workmen (Regulation of Employment) Conditions of Service Act 1979:**



Image Sourced from Scroll

The law makes provision for availing the onsite services of interstate workers by the contractors/establishments to **overcome the temporary shortage of required skilled workers in a State.** This Act ensures that employers are not forcing workers to migrate interstate against their own wish.

The act applies to all establishments with five or more Inter-State migrant workmen. **Section 1(4)** of the Act asks the employer to issue all such workers a passbook containing the name and place of the establishment, declaration of the period of employment, proposed wages, return fare payable to the employee.



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Additionally, **Sections 13, 14, 15 and 16** of the Act pertains to the wages, holidays and working of the employees. Wages payable to the inter-state migrant worker must be paid in the form of cash. The section states that an inter-state migrant that works in an establishment with a similar kind of work as a non inter-state migrant should be given equal wage. Any discrimination on the basis of gender in wage must not be allowed. The inter-state migrant worker's wage must not be less than the travel fare from their place of residence to the place of work. The Act also mandates the employer to:

- Provide the prescribed medical facilities to the workers, free of charge
- Provide such protective clothing to the workers as may be prescribed
- In case of fatal accident or serious bodily injury to any such worker to report to the specified authorities of both the States and also the next-of-kin of the worker
- To ensure regular payment of wages to such worker
- To ensure suitable conditions of work

**Section 19** of the Act states that under the circumstance that the worker has taken any loan by the employer, it shall only remain outstanding till the time he remains in employment of the contractor or the principal employer. Post completion of the term the loan must be deemed as extinguished.

Considering the current state of affairs, making due amendments to the Inter-state Migrant Act would **help the existing policy framework to act as a cohesive piece of legislature to uphold the rights of the migrant workers**. The main limitation of the Act is that it stipulates that at least 5 workers in an establishment need to be present in order to avail the provisions. As a result, **domestic workers or workers in unorganised sectors migrating from different States and working in various capacities in private properties and households cannot fall under the provisions of this Act**. Keeping in mind the Article 19 of the Constitution- the right to work anywhere in India, this Act should have been more inclusive in order to secure the rights of all migrant workers. Amending the Act to be more inclusive of all migrant workers, irrespective of where they work and with how many people they work, would allow more workers to exercise their rights. Additionally, Section 28 of the Act fails to make the violators of the Act cognizable offenders. The **existing system of inspection**



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**in the Act pertaining to migrant workers must be strengthened with help of a stringent penal provision upon failure of compliance with the Act.**



Image Sourced from Business Today

Majority of the migrant workers are placed in employment through contractors or agents. A **study in Chennai** reveals that 69% of the migrant workers mentioned that their decision to move to Chennai was made by contractors or agents. Such agents offer the workers no written contracts or any kind of enforceable agreements with respect to the wages they will receive or benefits they are entitled to. This leaves the migrant worker with **no commitments that can hold viability upon violation of their rights and makes them completely dependent on such unscrupulous middlemen for essential information.** Therefore, they are left with no choice but to continue getting



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exploited doing risky manual labor. **With the absence of any concrete legally binding document protecting them, any legal recourse is foregone by default. This leaves immense scope for manipulation of stipulated wage rates, working hours and promised working conditions.** It is often witnessed that due to dangerous working conditions and not being entitled to basic rights as workers, the migrant labour population is prone to accidents and deaths. This is especially witnessed in the construction sector which employs a high proportion of the migrant labour population.

Apart from formalising contractors and job agencies, ensuring they are validated and endorse fair wages as well as decent working conditions, **setting up more government-initiated placement agencies which can be contacted by workers who wish to migrate in search of better opportunities** would legitimize the entire process. This would create a direct database of the employers and help better monitor their compliance with the law. Furthermore, the current legal provisions only protect workers who are recruited through contractors as inter-state migrant workers, hence excluding the workers migrating independently, which **means India has no legal provisions protecting the rights of all the migrant workers.** The Act thus needs an amendment to identify and define migrant populations employed in the unorganised sector which can then be protected and acknowledged as a formal and significant workforce in India.



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### Unorganized Workers Social Security Act, 2008:



Image Sourced from AlJazeera

This law was framed to address the growing need to protect the large demographic working under the unorganised sector of the economy. According to Section 2(n) of the Act, **“Wage worker” means a person employed for remuneration in the unorganised sector, directly by an employer or through any contractor, irrespective of the place of work, number of employers, being paid in cash or kind, as a home based worker, a temporary worker, a migrant worker, or domestic workers.**

**Section 3 of the enactment upholds the unorganised worker’s right to social security benefits.** The social security benefits therein can be determined by the State Government, which **may formulate and notify, from time to time, suitable welfare**



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**schemes for unorganized workers, including schemes relating to provident funds, employment injury benefit, housing, educational schemes for children, skill upgradation of workers, funeral assistance and old age homes.**

Schedule 1 of the Act includes the following schemes, all of which are now applicable to migrant population employed in the unorganised sector :

- ❖ **Indira Gandhi National Old Age Pension Scheme:** The eligibility of this scheme encompasses all individuals above 60 yrs of age living below the poverty line. The beneficiaries aged 60-79 years receive a monthly pension of Rs. 300 (Rs. 200 by central government and Rs. 100 by state government). For individuals above 80 years, the stipulated pension amount is Rs.500 per month.
- ❖ **Janani Suraksha Yojana Scheme:** This scheme was proposed by the Government of India and was launched on 12th April, 2005 by the Prime Minister of India at the time. Its purpose is to reduce the neonatal and maternal deaths happening in the country by promoting institutional delivery of babies. National Rural Health Mission (NRHM) is leading this safe motherhood intervention and therefore making it a centrally sponsored scheme which integrates cash assistance with delivery and post-delivery care.
- ❖ **Janashree Bima Yojana Scheme:** The scheme launched on 10th August 2000 and replaced the Social Security Group Insurance Scheme (SSGIS) and Rural Group Life Insurance Scheme (RGLIS). It is eligible for individuals between 18-59 years and those who are the members of the identified 45 occupational groups are eligible to be covered under the Scheme. It provides life insurance protection to people belonging below or marginally above the poverty line. On natural death the beneficiary receives a sum of Rs. 30,000/-, on death or permanent disability due to accident the beneficiary receives Rs. 75,000/- and on partial permanent disability due to accident the beneficiary receives a sum of Rs. 37,500/-. The premium for the scheme is Rs. 200/- per member. A sum of 50 % premium under the scheme is met out of the Social Security Fund maintained by the LIC. The balance is liable to the member or Nodal Agency.



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- ❖ **Aam Admi Bima Yojana:** This is a Social Security Scheme for rural households. It was launched on 2nd October, 2007. The head of the family or the bread earner in the family is covered under this scheme. A premium of Rs.200/- per person per annum is shared equally by the Central Government and the State Government. The member to be covered should be aged between 18-59 years.
  
- ❖ **Rashtriya Swasthya Bima Yojana:** An unorganized sector worker belonging to BPL category and their family members (a family unit of five) shall be the beneficiaries under the scheme.
  1. The unorganised sector worker and his family (unit of five) will be covered.
  2. Total sum insured would be Rs. 30,000/- per family per annum on a family floater basis.
  3. Hospitalization expenses, taking care of most common illnesses with few exclusions
  4. All pre-existing diseases to be covered
  5. Transportation costs (actual with maximum limit of Rs. 100 per visit)



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## Scope of Inclusion in Current Social Security Policies



Image Sourced from DNA

With respect to international standards, India's progress can be compared with the ones propagated by the International Labour Organization (ILO), which India is a founding member of. The Constitution of India upholds all the fundamental principles set out in the seven core international labour standards. Government of India has ratified some conventions pertaining to:



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- (i) Forced Labour
- ii) Equal Remuneration
- iii) Discrimination
- iv) Hours of Work Industry Convention, 1919
- v) Night Work (women ) Convention 1919
- vi) Minimum Age Convention, 1919
- vii) Right to Association
- viii) Workmen's Compensation,1925
- ix) Equal Remuneration Convention, 1951

Article 38 of the Indian Constitution mentions that the state shall strive 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. This further **urges the need for law to step into the unorganised sector to uphold the rights of migrant labourers**. There are various legislations in place to protect labour rights in India **which are denied to wage labourers and migrant labourers as they are not a part of the organised sector of the economy**. Following are some such laws which can be extended to include migrant workers within their ambit to address the lack of social security policies for them:

**The Minimum Wages Act 1948:** This sets the minimum wages that must be paid to skilled and unskilled laborers. As of now since this law is not applicable to the unorganised sector, migrant laborers receiving less than minimum wage cannot seek any relief under the provisions of the same.

**Trade Union Act 1926:** The Act gives permission to register trade unions with the government. However, this Act doesn't affect any agreement between an employer and the employees. Therefore, it cannot by itself act as a means of change in the working conditions of the unorganised sector migrant labour workforce.

**Personal Injuries, (compensation insurance ) Act 1963:** This Act imposes a liability to the employer to compensate for any injuries occurring at the workplace for the



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employees. However, in its present form, even this Act stands inapplicable for the working conditions of the migrant labour.

**Contract Labour ( Regulation and Abolition ) Act 1970:** The Act regulates employment of contract labour in certain establishments and provides for its abolition in certain circumstances. Once again, the Act is not applicable to the unorganised sector labour in India and hence excludes the migrant labour.

**Bonded labour Systems (Abolition )Act 1976:** The Act abolished the bonded labour system to prevent exploitation of the weaker sections of the society. The victims of bonded labour are entitled to government assistance in the form of rehabilitation with Rs 1 lakh as compensation, access to agricultural land, low-cost housing, minimum wage employment, free rations under the public distribution system, and free education for children. However, the work has been simply relocated by employers from factories into private homes, where compliance is harder to monitor. Additionally, a large sum of bonded labour doesn't fall in the organised sector of the economy.

**Equal Remuneration Act 1976:** The Act enforces employers to pay equal remuneration to men and women workers.

**Contracts Labour (Regulation and Abolition) Act, 1970:** The Act was passed to regulate the employment of contract labour in certain establishments and to provide for the abolition under certain circumstances. However, the provisions of Act are not adequate to protect migrant labourers because of the labour laws that apply only to contract labour in the organised sector.



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## Regional Policies for Migrant Workers



Image Sourced from The Wire

In order to form cohesive policies to tackle the challenges faced by migrant workers, we must take into account what certain States with a high migrant population in India have done to protect such workers in their State and how effective those policies have proven to be. In an Index compiled by India Migration Now called **Interstate Migrant Policy Index 2019**, Kerala has ranked first out of seven States on account of the migrant friendly policies implemented. The State's **inclusive policy architecture for migrant-specific labour welfare schemes in terms of child policies as well as healthcare**, does justice to this impressive ranking. The State set up a welfare scheme



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for the migrant workers called 'Inter State Migrant Workers Welfare Scheme', on the May Day of 2010. This scheme ensures that each migrant worker is issued a membership card. In case of accidents or chronic diseases, **every registered worker is entitled to an amount of Rs. 25,000 as healthcare assistance for in-patient care in empanelled hospitals.** Furthermore, each worker is **eligible to get a special assistance of up to Rs. 25000 in the case that the labourer is incapable of undertaking jobs for more than six months due to accidents or chronic diseases.** The State has also introduced the **Apna Ghar Project** which ensures that each migrant worker is able to secure rental accommodation which is both sanitary and economical. It is currently valued at Rs 8.5 crore, and can potentially house 640 people. This accommodation is stipulated to cost in between Rs 750 and Rs 1,000 per month. Cities like Mumbai and Delhi also focus on the central Inter Migrant Act of 1979, in order to help the migrant workers. Punjab has also set an example by establishing a Migrant Welfare Board or the **Parvasi Bhalai Board**, in 2009. The board was set up with the intention of helping migrant workers with challenges related to decent working as well living conditions in the State. The Board commits itself to act as a safety net for the migrant labourers with the purpose of helping migrant workers integrate well within the State. The Board commits itself to act as a safety net for the migrant labourers.



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## Need for Policy Overhaul



Image Sourced from The NewYork Times

The existence of a handful of programs and welfare schemes have proved to be insufficient to address the multi pronged challenges of migrant workers, as most of them are deprived of any social security in India. In this regard, the **poor access to information about relevant social security schemes that migrant workers are eligible for**, works as a major roadblock. This is a policy gap that makes many of the initiatives fail to create the intended impact. This also impedes the inclusion of migrant labourers into society, when the need of the hour is to devise inclusive policies that would help in uplifting their standard of living.



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Acknowledging the plight of migrant labour population in India, we urgently need to formulate **a management system regarding their identity through an exhaustive database that would help in implementing schemes** which can look after their socio-economic, environmental and housing needs. Data collection by the source as well as target States would greatly help understand the policy issues comprehensively and analyse the demographic profile coherently to take specific actions for intervention, without hindering the activities of the local community.

Migrant workers, for the most part, are not issued any pass books by their employers as prescribed by law. Thus, there exists a vast discrepancy in forming even a rudimentary identification and employment record. The **Unorganized Workers Social Security Act**, with the help of an amendment should address this concern by penalising contractors and employers who don't issue employee passbooks.

In order to exercise their rights such labourers must be aware of the laws protecting them and the social security schemes they must be a beneficiary of. With respect to Article 38 of the Constitution, the state **needs to intervene to make these laws known to the workers working under the unorganised sector**. A **statutory 'Migrant Labour Board' being established as suggested in the Sixth Five Year Plan with advisory and executive powers** would further help protect the migrant labourers and ensure the implementation of the relevant laws.

To serve their best interests, the government must aid such labourers with the help of awareness programmes to exercise their collective bargaining power. Such **awareness programmes in the form of public service announcements on radio, television, billboards and pamphlets, could assist in educating the migrant labourer** through government assisted contractors to search for decent work opportunities and help them understand the beneficial schemes. Such a mechanism will also ease the process of identifying if and when their employers are found violating their rights. Doing so would aid them with the procedure to file complaints on specific grounds and look for opportunities elsewhere. This would lead to the **labour making informed choices and not settling for unfair sources of livelihood**. It would also ensure that migrant labourers integrate well with the rest of the society and build a positive perception in their favour. Awareness programmes battling against the discrimination faced by such



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labourers and representing them as the backbone of the economy, would further help the workers integrate well into the cities they migrate to and be treated more inclusively, both in a professional and social spectrum.

It is imperative to establish a government agency which can provide validated information regarding different facets of migrating; for instance, travel, work permit requirements, working conditions in the migrant area would help them make the best possible decision. In this regard, **panchayats, municipalities and corporations should collate and provide the information for such migrant employment opportunities.** These information cells could also hand out pamphlets for different social security schemes aided by the government that the workers can resort to, the rights they are entitled to at workplaces and establishments that they can contact to address any concerns with their workplaces.

Another factor that hinders the migrant workers' bargaining power is the fact that they are, for the most part, not skilled enough in terms of their educational qualifications. The **need to migrate comes from an effort to escape acute poverty.** Upon facing such adverse financial challenges, the workers seldom have the opportunity to get necessary training. Access to **skill training to rely on empowers the workers and furthers their bargaining power.** Thus, ensuring implementation of proper poverty alleviation programmes and attempting to improve the literacy level and vocational training rate could prove to be a long term solution which empowers such labourers. Providing adequate infrastructure for vocational training institutions which can offer training amalgamated with technology can help children in their early age and thereby improve their future employability. Skill development and training programmes focussed at obtaining decent work opportunities would also prove to be helpful in that respect.

A **community driven solution is to integrate placement agencies and information regarding the rights of such workers in the local panchayats.** This would make the migrant labourer aware of the options and select opportunities that would help them uplift their socio-economic conditions.



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Migrant labourers form a huge chunk of the total labour force in the Indian economy. They contribute substantially to the growing economy and need to be catered to with specific policies. The complicated nature of the hardships suffered by the migrant labourers require a comprehensive analysis of the migrating labourers. The **pattern of their migration needs to be studied in detail and due arrangements must be made by the government to regulate and foresee the protection of their rights** in unorganised sectors of the economy. This will help the government devise context specific policy to tackle the problems faced by them. Ensuring socio-economic wellbeing for migrant labourers would have a trickle-down effect on the economy and facilitate overall development by uplifting working and living conditions for a large section of our poor population that serves as the integral part of our urban service based economies.



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## **References:**

- [The number of international migrants reaches 272 million, continuing an upward trend in all world regions, says UN](#), Department of Economic and Social Affairs, United Nations
- [Decent Work Deficit in India: A Disaggregated Trend over the Three Post-Reform Decades](#), Anamika Moktan, World Review of Political Economy, JSTOR
- [ILO: Decent Work Country Programme for India](#), Labour File
- [Ensuring Decent Work and Dignity. A review of engagement with domestic workers across seven States of India](#), ActionAid
- [Goal 8: Decent Work and Economic Growth](#), United Nations Development Programme
- [The Inter-State Migrant Workmen \(Regulation of Employment and Conditions of Service\) Act, 1979](#)
- ['Issues Relating to Migrant Workers Including Appropriate Legislative Framework And Skill Development Initiatives For Prospective Emigrants.'](#) Twenty Third Report, Ministry of External Affairs
- [India - Decent Work Country Programme 2013-2017](#), International Labour Organization
- [India's third 'Decent Work Country Program \(2018-22\) to be launched on Nov 20](#), KNN
- [Labour Regulations and Labour Standards in India: Decent Work?](#), Jense Lerche, Research Gate
- [Pravasi Bhalai Sangathan](#)
- [Apna Ghar Projects](#)
- [Inter State Migrant Policy Index \(IMPEX\)](#), India Migration Now