INTERNAL MIGRANTS IN INDIA AND THEIR RIGHT TO FOOD

Photo Courtesy: Business Insider
INTRODUCTION

Migration from one area to another in search of improved livelihoods is a key feature of human history. Migration in India is not new and historical accounts show that people have moved in search of work, in response to environmental shocks and stresses, as well as conflicts over natural resources, to escape religious persecution and political conflict. However, improved communications, transport networks, and new economic opportunities have created unprecedented levels of mobility. Studies show that the process of migration is influenced by social, cultural, and economic factors and outcomes can be vastly different for men and women, for different groups and different locations.

There is considerable difficulty in defining a migrant since migration occurs willfully and is also circumstantial. Migration may occur when people shift to urban areas, to explore new opportunities, and in search of better living conditions. This migration could, and often results when source areas lack suitable options for employment/livelihood.

Worker movement, in general, takes different forms. The worker’s place of residence and place of work may be different, and the distance covered by daily commuting. At the other end of the spectrum, workers may move permanently from their places of birth or usual place of residence, maintaining little or no contact with their places of origin. Between these two extremes, people move away for differing periods of time.

Migration and Human Trafficking

As mentioned above, migration in general, implies movement of people from one place to another as result of several reasons. Thus there are many kinds of migrants, ranging across different purposes and thereby experiencing different migrating conditions.

Often, migration and human trafficking are perceived as the same thing. However, in reality, they are overlapping but different concepts. Trafficking is also a kind of migration where the consent of the migrant is forcibly or falsely sought, and the person has little control over place, purpose or nature of migration. In a nutshell, trafficking is a coerced form of migration, which is essentially accompanied with false promises or physical force and is therefore illegal in nature. Exploitation is the key component of trafficking, while it may not be the chief characteristic of migration. Trafficked people are the most vulnerable and powerless people in their source region, and most exploited ones in the destination.
While the migrants have a legal set of rights, inherent in their status; the trafficked people face gross violation of their human rights.

According to the provisional data released by Census India in 2011, 68.84% lived in rural areas and 31.16% in towns and cities. Between 1951 and 2001, the proportion of the population living in urban areas rose from 17.3% to 32.8%. Level of urbanization increased from 27.81% in 2001 Census to 31.16% in 2011. The proportion of rural population declined from 72.19% to 68.84% in the same period. A major reason for such an increase in urban population is attributed to migration.

Migration is invariably connected to hunger and poverty. Lack of physical assets and human capital along with social deprivation due to caste and gender force many to migrate from their natural habitat. But once they move to a new place, mostly from rural to the urban area, lack of formal residency rights, lack of identity proof, lack of political representation, low-paid, insecure or hazardous work, limited access to state-provided services such as health and education and discrimination based on ethnicity, religion, class or gender all add to the woes of the migrant. Yet internal migration is given very low priority by the government in policy and practice, partly due to a serious knowledge gap on its extent, nature and magnitude. The difficulties faced by internal migrants are dismissed on the grounds that the Constitution of India (Article 19) does not restrict free mobility within the country. A growing misunderstanding of the migratory phenomenon is often at the root of misconceived policies or inaction regarding migration. Women and children are the most affected due to their vulnerability and invisibility. Migrant children hardly receive any education due disrupted schooling forcing them to follow the fate of their parents and continue in poverty and deprivation for generations.

It is necessary to build awareness on internal migration and adopt a human rights-based approach to migrant inclusion and prepare our cities for the heavy inflow of migrants expected in the future.

CAUSES OF MIGRATION
Given the diversity in the nature of migration in India, the causes are also bound to vary. Migration is influenced both by the pattern of development, and the social structure. The National Commission on Rural Labour (NCRL), focusing on seasonal migration, concluded in 2003 that uneven development was the main cause of seasonal migration. Disparity between different socioeconomic classes and the development policy adopted by various governments

1 Article 19 of The Constitution of India gives the right to all citizens to move freely and reside and settle in any part of the territory of India.
since independence has accelerated the process of seasonal migration. A large part of the indigenous people in India’s tribal regions have been forced to move out due to intrusion by outsiders, displacement by development activities like construction of dams and mining, deforestation and failure of agricultural livelihood.

At one end of the migration spectrum, workers could get locked into cycle of debt, where earnings from migration are used to repay debts incurred at home or in the destination areas, thereby cementing the migration cycle. At the other end, migration is largely voluntary, although shaped by limited choices. The landless poor, who mostly belong to lower caste, indigenous communities, from economically backward regions, migrate for survival and constitute a significant proportion of seasonal labour flow. Moreover, absence of non-farm employment, low agricultural production has resulted in a growth of seasonal migration.

Several push and pull factors exist in the country which are responsible for the large-scale migration. India has high levels of regional disparity in terms of population distribution and development indicators. Most of the north Indian states are poor in infrastructure facilities and are also highly populated. Hence a large number of people from states like Uttar Pradesh, Orissa and Bihar migrate to other states in search of jobs.

Low and variable agricultural production coupled with lack of local employment opportunities are the biggest cause of movement of people outside the state. In states like Orissa, landlessness and marginalisation of the poor people turns out to be the main cause of them moving to more developed regions of the country in the hope of a better livelihood.

The reasons for migration through trafficking are primarily familial and societal. The major ones include abject poverty and unemployment; displacement due to natural calamities; misplaced government policies; gender discrimination; and lack of access to education and information.

Maharashtra, Gujarat, the south Indian cities of Bangalore, Chennai, Hyderabad and other states in northern parts of the country like Haryana, Punjab and Delhi have become attractive destinations for the migrant population. Rapid urbanisation and industrialisation of these areas have generated more employment opportunities and also created better infrastructure. People migrate to these regions perceiving them as greener pastures.

**THE IMPACT OF MIGRATION ON MIGRANTS AND THEIR FAMILIES**

Migration has both positive and negative impacts on human development.
On the positive side it brings in cash which may or may not result in an improvement in living standards. It can also result in the learning of new skills and an improvement in social status. On the negative side migration carries the risk of injury, exposure to life threatening diseases, loneliness and increased work burdens for women left behind. Poorer migrant workers, crowded into the lower ends of the labour market, have few entitlements when compared to their employers or the skilled workers in the organized sector. They have meager personal assets and suffer a range of deprivations in the destination areas.

**Impact on living conditions**

Generally it has been seen that Migrant labourers live in deplorable conditions. There is no provision of safe drinking water or hygienic sanitation. Most live in open spaces or makeshift shelters in spite of the Contract Labour Act of 1970 which stipulates that the contractor or employer should provide suitable accommodation.

Apart from seasonal workers, workers who migrate to the cities for job live in parks and pavements. Slum dwellers, who are mostly migrants, stay in deplorable conditions, with inadequate water and bad drainage. Food costs more for migrant workers who are not able to obtain temporary ration cards.

Though provision of water and sanitation is claimed to be a priority, the situation with regard to access to clean drinking water and sanitation across the country is still dismal.

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**A GLIMPSE FROM SANJAY COLONY**

- **Somvati**, 41 years, widow; from Mathura, UP; Living in Sanjay Colony since 22 years
- Has 3 children; all of them are dependent on her
- She works as a ‘kataran’ worker which mainly requires sorting of assorted pieces of clothes according to their colour, material etc.
- She earns up to Rs. 100 per day after working 10-12 hours. If she fails to work, she loses her daily wage.
- She stays in a half-concrete house with no in-house sanitation facilities.
- For water, she is dependent on DJB tankers which visit their lane after the usual 3-4 days.
- For Somvati, the main issues that face her & her family are –
  - For food, she is dependent on open market as she doesn’t have a ration card.
  - Low wages which make its very difficult to provide for her family.
  - Her health which as a result of her work keeps vulnerable to respiratory infections
  - Insufficient supply of water

*Name changed to protect identity*

Quoting the 2011 census data, the then Union Minister for Rural Development, Jairam Ramesh, acknowledged that 60% of rural households still do not have access to proper toilet facilities and called for urgent measures. The lack of adequate portable water and proper sanitation are responsible for 21% of communicable diseases in India.
The recently developed draft *National Water Policy, 2012* lacks a human rights approach and focuses more on water as an economic good. Furthermore, it favors privatization of water while calling for the government to withdraw from its role as service provider. This is a dangerous trend. It is important that the draft policy recognizes, protects and fulfills the right to water as a human right of all, and takes the requisite steps to prevent privatization in order to ensure affordability and access to clean and potable water for all.

To add to the migrant population in India, there are millions of trafficked children and women who are working in deplorable conditions in which their basic rights and dignity are violated. Many women migrate from their villages to work in an environment that is completely foreign to them. Women migrants are typically live-in domestic workers and are thus most vulnerable to physical and sexual abuse, excessively long working hours, and deprivation. Many of them are from tribal regions and the traditional discrimination they face as women and as live-in domestic workers is compounded by their ethnicity.

**THE STORY OF THE HOMELESS IN DELHI**

**Bishwanath**, from West Bengal, made Boat Club lawns his home a decade ago.
- He ran a shop in West Bengal, and came to Delhi for his treatment of leprosy, but never went back.
- He goes home whenever there is a need, which is rare.
- He has various government identification cards that he has acquired over the years but he says that they mean nothing to him.

**Kuchbena**, from Uttar Pradesh, came to Delhi over two years back but didn’t return.
- He is a permanent figure near the Vayu Sena Bhawan Bus stop.
- He shares that he lives on people’s charity; and bathe and wash at the Boat Club.

*Source: The Hindu, Sept 3rd, 2013*

The migrant population of Delhi further includes a vast population comprising of the homeless. As per the 2001 Census, Delhi alone has an estimated population of over 3 lakh homeless living in abject poverty and pitiable conditions. Most of them have either been abandoned by their families or live with their families in the open. Delhi has only 150 State-run temporary/permanent shelters for those living on the streets, which cater to only about 50-100 homeless people.

**Impact on Health and Education**

Labourers working in harsh circumstances and living in unhygienic conditions suffer from serious occupational health problems and are vulnerable to disease. Those working in quarries, construction sites and mines suffer from various health hazards, mostly lung diseases. As the employer does not follow safety measures, accidents are quite frequent. And in cases of forced labour (bonded labour) most of these labourers are not provided medical facilities.
Migrants cannot access various health and family care programmes due to their temporary status. Free public health care facilities and programmes are not accessible to them due to the same reason. For women workers, there is no provision of maternity leave, forcing them to resume work almost immediately after childbirth.

For those children and adults who have been trafficked, the situation is even worse. Children are often trafficked and forced to toil in stone quarries; brick kilns; bidi and cigarette factories; zari and weaving industries; construction sites and as domestic helps. These children are denied their fundamental right to childhood, to education, to play and to dream like other children. Forced child labour enables for the exploitation and abuse of children hindering them from developing physically, mentally and socially, and violates their basic fundamental right to freedom.

FACTS AND FIGURE SHEET OF INTERNAL MIGRATION IN INDIA

- The Constitution of India (Article 19) gives the right to all citizens to “to move freely throughout the territory of India; to reside and settle in any part of the territory of India”.
- India’s total population, as recorded in Census 2011, stands at 1.21 billion.
- Internal migrants in India constitute a large population: 309 million internal migrants or 30 per cent of the population, and by more recent estimates 326 million or 28.5 per cent of the population.
- Migration in India is primarily of two types:
  i. Long-term migration, resulting in the relocation of an individual or household;
  ii. Short-term or seasonal/circular migration, involving back and forth movement between a source and destination. Estimates of short term migrants vary from 15 million \(^6\) to 100 million. Most short-term migrants belong to socioeconomically deprived groups, such as Scheduled Castes or Scheduled Tribes, having negligible educational attainment, limited assets and resource deficits;
- Out of the total internal migrants, 70.7 per cent are women \(^7\).
- Migration for employment-related reasons is given as the prominent reason for male migration in both rural and urban areas – 29 per cent rural male migrants and 56 per cent of urban male migrants \(^5\).
- Although no clear data are available, there are about 15 million child migrants in India.
- Lead source states: Uttar Pradesh, Bihar, Rajasthan, Madhya Pradesh, Andhra Pradesh, Chhattisgarh, Jharkhand, Orissa, Uttarakhand and Tamil Nadu.
- Key destination states: Delhi, Maharashtra, Gujarat, Haryana, Punjab and Karnataka.
- Migrants are mostly employed in the following subsectors: construction, domestic work, textile, brick-kilns, transportation, mines, quarries and agriculture.
- Migrants face denial of basic entitlements including access to subsidized food, housing, drinking water, sanitation and public health facilities, education and banking services and often work in poor conditions devoid of social security and legal protection.

Source: UNICEF database

\(^2\) Bidi: a type of local handmade cigarette made of unprocessed tobacco wrapped in leaves
\(^3\) Zari: gold thread work
\(^4\) Census of India 2001
\(^5\) NSSO 2007–2008
\(^6\) Deshingkar and Akter 2009
\(^7\) Daniel 2011; Smita 2011
ARTICLES IN THE CONSTITUTION OF INDIA WHICH PROTECT THE INTEREST OF THE MIGRANTS

Article 19: Freedom to move freely, reside and settle in any part of India, subject to reasonable restrictions by the State in the interest of the general public or for the protection of the scheduled tribes so as to safeguard indigenous and tribal peoples from exploitation and coercion.

Article 21: Protection of life and personal liberty – No person shall be deprived of his life or personal liberty except according to procedure established by law.

Article 21 A: Right to education – The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.

Article 23: Prohibition of traffic in human beings and forced labour
(1) Traffic in human beings and any form of forced labour is prohibited and any contravention of this provision shall be an offence punishable in accordance with law.
(2) Nothing in this article shall prevent the State from imposing compulsory service for public purpose, and in imposing such service the State shall not made any discrimination on grounds only of religion, race, caste or class or any of them.

Article 24: Prohibition of employment of children in factories or other hazardous conditions. No child below the age of fourteen years shall be employed in work in any factory or mine or engaged in any other hazardous employment.

Article 38: State to secure a social order for the promotion of welfare of the people – (1) 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.

(2) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also groups of people residing in different areas or engaged in different vocations.

Article 39: Certain principles of policy to be followed by the State – The State shall, in particular, direct its policy towards securing
  a. that the citizens, men and women equally, have the right to an adequate means of livelihood;
  b. that ownership and control of the material resources of the community are so distributed as best to subserve the common good;

8 Deshingkar and Akter 2009
c. that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;
d. that there is equal pay for equal work for both men and women;
e. that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter vocations unsuited to their age or strength;
f. that the children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Article 41: Right to work, to education and to public assistance in certain cases - The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

Article 43: Living wage, etc., for workers – The State shall endeavour to secure, by suitable legislation or economic organization or in any other way, to all workers, agricultural industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.
CENTRE / STATE ACTS, POLICIES AND CONSTITUTIONAL PROVISIONS SERVING MIGRANT WORKERS

- **Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979**
  
The Act regulates the employment of inter state migrant workmen and provides for their conditions of service. It applies to every establishment and contractor who employs or employed five or more inter-state migrant workmen on any day of the preceding 12 months. The Act insists on the registration of all principal employers/contractors employing migrant labour. The Act also under its provisions insist on
  - licensing of contractors,
  - issue of passbook affixed with a passport-sized photograph of the workman indicating the name and the place of the establishment where the workman is employed,
  - the period of employment, rates of wages, etc. to every inter-state migrant workman,
  - payment of minimum wages fixed under the Minimum Wages Act, 1948,
  - payment of equal wages for inter-state migrant workmen performing similar nature of work along with the local labourers,
  - Payment of journey allowance including payment of wages during the period of journey
  - Payment of displacement allowance,
  - Providing for suitable residential accommodation,
  - Providing for medical facilities free of charge,
  - Punishment with imprisonment of upto one year or with fine upto Rs. 1000 or both for contravening the provisions of the Act.

- **Unorganized Workers’ Social Security Act, 2008**
  
  For ensuring the social security and welfare of the unorganized workers (which includes home-based workers, self-employed workers or daily-wage workers)

  - The Act ensures to provide life and disability cover, health and maternity benefits; old age protection; and any other benefits as may be determined by the Central Government.
  - The act has a provision for registering all the 400 million unorganized workers engaged in various informal sectors and will be provided with a unique national identification number. As per the provision, along with the worker (except BPL families) the employer, Union government and respective state government will contribute 1 rupee a day to be used for the social security benefit for the workers. This means, every day around 1600 million rupees will be collected and will be deposited with some designated banks or insurance agency. Annually the scheme aspires to collect 584,000 million rupees which may be used for the social security coverage of 400 odd million workers.
  - In relation to the coverage of migrant workers; administering the Act will be a massive and complex task for the government to first register and keep track of each of the migrant workers who will be earning their wages from different location and different employees.

- **Bonded Labour System (Abolition) Act, 1976**
  
  It freed unilaterally all the bonded labourers from bondage with simultaneous liquidation of their debts. It made the practice of bondage a cognizable offence punishable by law. The Act is being implemented by the State Governments concerned.

- **Building and Other Construction Workers (Regulation of Employment and Condition of Service) Act, 1996**
  
  The Act provides for regulating the employment and conditions of service of building and other construction workers and also provides for their safety, health and welfare measures and other matters.
Building and Other Construction Workers' Welfare Cess Act, 1996
An act to provide for the levy and collection of a cess on the cost of construction incurred by employers with a view to augmenting the resources of the Building and Other Construction Workers’ Welfare Boards constituted under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.

Contract Labour (Regulation and Abolition) Act, 1970
Contract workers do the same or similar work that is done by regular employees of the principal employer, the contract workers have to be paid the same wages.

Child Labour (Prohibition & Regulation) Act, 1986
It outlines where and how children can work and where they can not
- The Act prohibits employment of children below 14 years in certain occupations such as automobile workshops, bidi-making, carpet weaving, handloom and power loom industry, mines and domestic work. In light of the Right of Children to Free and Compulsory Education Act, 2009, the Child Labour Amendment Bill of 2012 seeks to prohibit employment of children below 14 years in all occupations except where the child helps his family after school hours.
- The Bill prohibits employment of adolescents in hazardous occupations as specified (mines, inflammable substance and hazardous processes).

The Amendment Bill for the Act is still pending in the Parliament. Recently the government had prohibited employment of children as domestic servants and in the hospitality and recreation sectors.

Employees’ Provident Funds & Miscellaneous Provisions Act, 1952
An Act to provide for the institution of provident funds pension fund and deposit linked insurance fund for employees in factories and other establishments.

Equal Remuneration Act, 1976
Aims to provide for the payment of equal remuneration to men and women workers and for the prevention of discrimination, on the ground of sex, against women in the matter of employment.

Maternity Benefit Act, 1961
To regulate the employment of women in certain establishments for certain period before and after child-birth and to provide for maternity benefit and certain other benefits.

Minimum Wages act, 1948
The Act provides for fixing wage rate (time, piece, guaranteed time, overtime) for any industry that has at least 1000 workers.
1) While fixing hours for a normal working day as per the act should make sure of the following –
- The number of hours that are to be fixed for a normal working day should have one or more intervals/breaks included.
- At least one day off from an entire week should be given to the employee for rest.
- Payment for the day decided to be given for rest should be paid at a rate not less than the overtime rate.
2) If an employee is involved in work that categorizes his service in two or more scheduled employments, the employee’s wage will include respective wage rate of all work for the number of hours dedicated at each task.

3) It is mandatory for the employer to maintain records of all employee’s work, wages and receipts.

4) Appropriate governments will define and assign the task of inspection and appoint inspectors for the same.

❖ **Payment of Gratuity Act, 1972**
The Act was enacted to provide for a scheme for the payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments employing ten or more persons.

❖ **Payment of Wages Act, 1936**
A central legislation enacted to regulate the payment of wages to workers employed in certain specified industries and to ensure a speedy and effective remedy to them against illegal deductions and/or unjustified delay caused in paying wages to them.
It applies to the persons employed in a factory, industry or other establishment or in a railway, whether directly or indirectly, through a sub-contractor. The Act is applicable to employees drawing wages up to Rs. 1600/- a month.

The Central Government is responsible for enforcement of the Act in railways, mines, oilfields and air transport services, while the State Governments are responsible for it in factories and other industrial establishments.

❖ **Workmen Compensation Act, 1923**
Under the Act, the State Governments are empowered to appoint Commissioners for Workmen's Compensation for (i) settlement of disputed claims, (ii) disposal of cases of injuries involving death, and (iii) revision of periodical payments.

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Citizen Charter (India, Ministry of Labour)
To ensure decent working conditions and improved quality of life of workers, building an India without child labour in hazardous sectors and enhancing employability through employment services and skill development on a sustainable basis. Improving the working conditions and the quality of life of workers through laying down and implementing policies / programmes / schemes / projects for providing social security and welfare measures, regulating conditions of work, occupational health and safety of workers, eliminating child labour from hazardous occupations and processes, strengthening enforcement of labour laws and promoting skill development and employment services.

National Employment Policy, 2008
Aims at increasing formal sector jobs as well as improving the quality of jobs in the unorganised sector. Policy encompasses macro-economic and sectoral employment strategies, labour market institutions, skill development as well as development of employment-intensive industries.

National Policy on Children, 1974
The goal of the policy is to ensure that the constitutional provisions for children and the UN Declaration of Rights are implemented. It outlines services the state should provide for the complete development of a child, before and after birth and throughout a child’s period of growth with a focus on health and nutrition programmes. It insists that children should have free and compulsory education until the age of fourteen; education should include physical education, and recreational time. Special attention needs to be given to children from marginalised backgrounds or children with social handicaps. Children should be protected from abuse, neglect, cruelty and exploitation. Existing laws need to be amended to take into account so that the best interest of the child is always first priority. The policy outlines that programme formulation and implementation should give priority to child health, nutrition, orphan and destitute children, crèches and children with disabilities.

National Policy on Child Labour, 1987
To protect child labour from exploitation and from being subjected to work in hazardous conditions that endanger such children’s physical and mental development, and the need to ensure the health and safety of children at the workplace. It recognized that they should be protected from excessively long working hours and from night work, that work even in non-hazardous occupations should be regulated, and all working children should be provided with sufficient weekly rest periods and holidays. The programme of action plan under the national child labour policy comprises:
- a legislative action plan
- focusing on general development programmes for benefiting child labour
- Project- based action plans in area of high concentration of child labour engaged in wage/quasi-wage employment
Development of Women Children in rural Areas (DWCRA) 1983, Scheme
A sub-component of IRDP and a centrally sponsored scheme of the Department of Rural Development with UNICEF cooperation to strengthen the women's component of poverty alleviation programmes. It is directed at raising the income levels of women of poor households so as to enable their organized participation in social development towards economic self reliance. The DWCRA's primary thrust is on the formation of groups of 15 to 20 women form poor household at the village level for delivery of services like credit and skill training, cash and infrastructural support for self employment. Through the strategy of group formation, the programme aims to improve women's access to basic services of health, education, child care, nutrition and sanitation.

National Policy on Skill Development 2009
The objective of this policy is to empower all individuals with nationally and internationally recognized qualifications to gain access to decent employment and ensure India's competitiveness in the global market.
The target group for skill development comprises all those in the labour force, including those entering the labour market for the first time (12.8 million annually), those employed in the organized sector (26.0 million) and those working in the unorganized sector (433 million) in 2004-05. The current capacity of the skill development programs is 3.1 million. India has set a target of skilling 500 million people by 2022.

Protocol on Prevention, Rescue, Repatriation and Rehabilitation of Trafficked & Migrant Child labour, 2008
Since a large number of rescued child labourers are found to be migrants the protocol lays down guidelines on actions to be taken by different departments of state governments, police, children and women commissions, non-government organizations and other stakeholders.

EXISTING STRUCTURES FOR POLICY IMPLEMENTATION

For Internal migrants:
The Ministry of Labour and the Departments of Labour, at state levels, are responsible for formulating and implementing measures to protect migrant workers. Certain existing labour laws aim to improve the conditions of migrant workers and prevent their exploitation. The important ones are: the Inter State Migrant Workmen (Regulation and Conditions of Service) Act, 1979; the Minimum Wages Act, 1948; the Contract Labour (Regulation and Abolition) Act, 1970; the Equal Remuneration Act, 1976; and the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.
The enforcement of these laws is the responsibility of both the central and state governments. At the central level, the key agency is the office of the Chief Labour Commissioner and its field offices. However, the Directorate General of Labour Welfare and the Welfare Commissioners also deal with certain welfare provisions emanating from some of these enactments. In the states, the offices of the Labour Commissioners and their field offices are responsible for enforcing these laws.

Concerns of migrant labourers are also the responsibility of the relevant Social Sector Ministries (Health and Family Welfare, Human Resource Development, Food and Consumer Affairs, Urban Affairs, Social Justice). However, there are no separate departments in these ministries dealing exclusively with migrant labour. The Ministry of Home Affairs has the responsibility for immigration.
For International Migrants

India regulates external labour migration flows, for which the 1983 Emigration Act provides the necessary legal framework. The office of the Protector of Emigrants, Ministry of Labour, is empowered by law to regulate the deployment of Indian nationals seeking foreign employment. The main objective of state intervention is to ensure that nationals obtain legally valid employment abroad under acceptable conditions. This is achieved mainly by setting minimum employment standards and verifying employment contracts; regulating recruitment through licensing the agents; issuing emigration clearances for certain categories of emigrants, especially those considered less able to protect their own interests; and handling public grievances related to violation of employment contracts and recruitment abuses.

Two other ministries concerned with the emigration of Indian workers are the Ministry of External Affairs (MEA) and Ministry of Home Affairs. Indian diplomatic missions abroad come under the MEA. They often have a labour attaché posted to the mission, responsible for monitoring and reporting on the conditions of Indian nationals and liaising with host government authorities on matters such as employment conditions, welfare and repatriation of migrant labour. The MEA also addresses issues related to international migration during bilateral diplomatic negotiations, especially with major destination countries. The Immigration Department under the Ministry of Home Affairs is responsible for the control of exit of Indian nationals. The Police Department under the Ministry of Home Affairs is responsible for investigating complaints lodged on recruitment abuses in India.

RECOMMENDATIONS

- **Migrant’s right to adequate and nutritious food should be immediately addressed**
  by making amendment to the National Food Security Act, 2013. The Act must specifically include the migrant population in the category of vulnerable groups who will be entitled to benefits under this Act.

- **For children living in difficult circumstances, the following measures can be taken up**
  - Assessment and evaluation of the Government run food security programmes for children in difficult circumstances that include street and working children.
  - Estimating the number of children getting opportunities from the programmes and those who are not benefited from the program.
  - Finding out the quality and quantity of food which are distributed to the children through various Government schemes.

- **Government agencies must act as a resource pool for migrants** residing in different areas, maintaining a register of migrant workers. Lack of reliable data is a hindrance to finding the right solution for the grievances of migrants.

9 The rights of Indian nationals working in various fields, especially in the unorganised sector are hardly protected by the existing laws and they have miserably failed to shield the immigrants from unpredictable layoffs as an effect of the labour laws in those countries which favour their own citizens. As India has not ratified the United Nation's Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, it is impossible to assert the rights of its nationals in any foreign land.
- Improve institutional preparedness and build capacity for facilitating and promoting migration through
  - Creating inter-district and inter-state coordination committees to jointly plan institutional arrangements between administrative jurisdictions of sending and receiving areas to ensure service delivery.
  - Building capacity of panchayats to maintain a database of migrant workers (with details of numbers of migrants and recruitment by contractors) and establish vigilant committees to identify entry of new migrants at the local level.
  - Establishing migrant labour cells in each state labour department with the support of the Labour Ministry.
  - Increasing financial and human resources in migration-prone areas.
- Pro-migrant development strategies must be adopted to provide migrant families sustainable livelihood opportunities with social securities, proper housing facilities, safe drinking water, sanitation, education, health facilities and common property resources, social and physical infrastructure.
- It is necessary to build awareness on internal migration and adopt a human rights-based approach to migrant inclusion and prepare our cities for the heavy inflow of migrants expected in the future.
- A coherent legal and policy framework on migration should be developed in which -
  - Migration is mainstreamed in a comprehensive and focused manner in policy documents and national development plans such as Five Year Plans, Jawaharlal Nehru National Urban Renewal Mission and City Development Plans.
  - A universal national minimum social security package is developed. This must cover minimum wages (otherwise it shall fall under the Bonded Labour Act, 1976) and labour standards and incorporate portability of benefits in all government social protection schemes and public services with redressal mechanism with accountability.
  - Targeted components and special outreach strategies for migrants within public services and government programmes are designed.
  - The distress nature of migration is minimized by adopting pro-poor development strategies in backward areas, including providing sustainable livelihood opportunities, increased access to land, common property resources, social and physical infrastructure and governance institutions in sending areas and strengthening programmes such as MGNREGA, food security programmes and creating opportunities for access to credit.

The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act (1979) must be revised to ensure that –
- All migrants and not just migrants crossing state boundaries are registered with clear guidelines for interstate cooperation.
- It must monitor unregistered contractors and establishments.
- Ensure access of migrants to social protection, and their right to the city with special focus to the vulnerabilities of children and women migrants.
- Provisions are made for crèches, education centres for children or mobile medical units for the labourers around work sites.
- Important provisions of the Act such as minimum wages, displacement allowance, medical facilities and protective clothing remain strictly enforced at all times and places.
The Bonded Labour Act, 1976 and Child Labour Regulation and Prohibition Act, 1986 must be enforced with full accountability of the concerning officials.

Ensure evidence-based policy making by -

- Revising design of Census and surveys on migration to adequately capture sex disaggregated and age-disaggregated data on short-term migration and multiple reasons for migration.
- Conducting detailed countrywide mapping of internal migration (at panchayat level with the support of civil society organizations and labour departments).
- Encouraging state-level research institutions to develop state migration profiles, including state-wise mapping of nature, timing, duration and magnitude of migration cycles.
- Increasing research on sector-wise contribution of migrants in different industries of the economy, including their contribution to GDP and domestic remittances.

India must ratify The United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families in order to assert the rights of migrants.