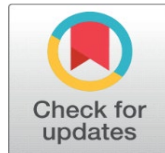
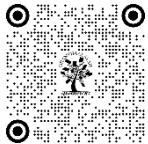


# COVID-19 AND MIGRANT WORKERS: A CONSPECTUS ON ASSESSING ACCOUNTABILITY AT THE HANDS OF THE GOVERNMENT IN INDIA

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## ABSTRACT

The plight of migrant workers in India during COVID-19 pandemic is inextricably intertwined with legal and policy failure of systemic nature. This sudden imposition of lockdown in millions of people were deprived where thousands of migrant labours stuck with no jobs, no healthcare and no social security. A few weeks ago, Liz Murray posted a great article that critically examined the nature of government action and legal structures pertaining to migrant workers' rights in the importance context of the pandemic. It assesses the gap between the existing labor laws, the court interventions and the policy responses — and implementation and accountability are examined against these benchmarks. It examines the obligations of the Indian government, under the Constitution and International Human Rights Law to protect the rights of migrants. This article attempts to assess the legal loopholes and possible reforms needed to protect the rights of migrant labourers by examining landmark cases, statutory instruments, and welfare measures of the state in the backdrop of the crisis. The results indicate that although certain measures were put in place to address hardships, these measures did expose migrant workers to long-term insecurity and injustice. The article ends with a call to reinforce labor legislation, the social protection mechanism, and accountability in crisis management.

**Keywords:** Migrant Workers, COVID-19, Indian Labor Laws, Government Accountability, Legal Protections



## 1. INTRODUCTION

Migrant workers have been an indispensable part of India's economic setup, particularly in sectors like construction, agriculture, textiles, domestic work, and manufacturing. A huge portion of the workforce in the country comprises of these workers who migrate from villages to cities, in search of jobs. The Economic Survey of India (2017) estimates that there are 100 million internal migrants in India. Most of these workers are from economically weaker sections of society working in low-paying informal sector jobs without social security benefits.

Migrant workers are indispensable to economic growth yet many remain at the margins without access to health, education, housing and legal protection. They labor in unsafe working environments, off minimal pay and enjoy little to no job stability. Their outside of the purview of formal labor protections has meant a history of exploitation, with employers often violating labor laws without consequence. These vulnerabilities were exacerbated by the COVID-19 pandemic. India unexpectedly imposed a national lock down on march 24, 2020 with no prior notice which forced millions of migrant workers, stranded with no jobs to go to, no wages to earn, no means of transportation. Public transport was shut down with immediate effect and the government was not in any position to help, driving thousands of migrant workers to hit the roads on foot, covering hundreds of kilometers to reach their native villages. Multiple

stories documented horrifying deaths of workers due to starvation, fatigue or accident. This crisis showed the gaping holes in our preparedness and the fact that, despite the large number of migrant labourers in the country, India lacked any legislation to protect migrant workers in public emergencies.

It could also be observed that the pandemic highlighted the necessity to reform labor laws to give migrant rights and social security. The government did announce relief measures like the Pradhan Mantri Garib Kalyan Yojana and free food distribution via the public distribution system (PDS), but these efforts did not go very far. The absence of registration information, and the exclusion of many informal workers from a government database for exactly this purpose, meant many workers were left without access to benefits.

Judiciary also contributed to the heart of the matter of migrant workers. In a number of instances, the Supreme Court and High Courts stepped in, ordering governments to arrange transportation, food, and money. Still, it ultimately fell short, leaving voids in the government's response. This paper seeks to assess the existing legal framework for migrant labourers in India and to evaluate whether the Government has been accountable enough in addressing the crisis. The study, by evaluating the legislation, analyzing government roles and tracing judicial interventions in the past, aims to underplay the deficiencies in the current scheme and suggest remedies for future policy reforms. In light of the lessons learned from the COVID-19 crisis, and with progress reached in international discussions, the call for a dedicated legal instrument to guarantee rights and protection for migrant workers is more urgent than ever.

## 2. THE EXISTING LEGAL FRAMEWORK PERTAINING TO THE MIGRANT WORKERS IN INDIA — LABOR LAWS AND POLICIES

There are numerous labor laws in India that are meant to safeguard the rights of workers, but these laws are poorly implemented with respect to migrant laborers. Disproportionately, labor laws are designed to apply to formal sector employees, disregarding the millions of informal workers—71% of the informal workforce—including interstate migrants. Some of the important legal provisions relating to migrant labour in India are:

Category	Provision	Key Features	Challenges in Implementation
Labor Laws Favoring Migrant Workers	The Inter-State Migrant Workmen Act, 1979	Laws in Force – Regulates employment and working conditions of inter-state migrant workers; mandates registration of contractors and provision of minimum wages, housing and social security.	Weak enforcement; many migrant workers are still unregistered so they are unable to enjoy benefits.
	The Occupational Safety, Health and Working Conditions Code, 2020	Amalgamates several labor laws; provides safety, health, and improved working conditions, and safeguards the rights of workers (including migrants).	Poor design: not likely to provide much insurance in Covid-19 time
	Code on Social Security, 2020	Increases social security for unorganized sector employees (including migrants); permits a national workforce database.	Bureaucratic minefield for implementation; huge informal worker population still undocumented
Food Security and welfare schemes	Capable One Nation Porridge Card (ONORC)	Allows migrants to get subsidised food grains anywhere in the state from any Fair Price Shop.	Late implementation; technical issues and unawareness among staff
	Pm-Garib Kalyan Yogana	Free ration and cash transfers to migrants and vulnerable people	The exclusion of many migrant workers due to any Jan Dhan accounts and Aadhaar linkage was further termed as 'inhuman, hence, unjust'.
Fiscal and Work support	The Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA)	Ensures 100 days of guaranteed wage employment in every financial year to every rural household whose adult members volunteer to do unskilled manual work, is one of the measure which helped returning migrant workers.	No money and no pay; locals are left out of the city
	Atmanirbhar Bharat Package	One economic relief pledge of ₹20 lakh crore, over free food, plus	Delay in Implementation; No Direct Cash Transfers for Most Migrant Workers.

		credit support deploying migrants, directly to new owners.	
Judicial Interventions	Migrant Workers Supreme Court Directions (2020)	Ordered state governments to provide free food, transport and employment assistance to the migrant workers.	States had difficulty enforcing their laws because they were too uncoordinated Delayed response.
	Case Name: Gujarat Mazdoor Sabha v. State of Gujarat (2020)	Importance of Workers' Rights during Pandemic: Supreme Court Nullifies Suspension of Labor Laws	Not much change as most labor protection had been diluted by new labour codes
	Future Policies and How to Prepare For A Crisis	National Database for Unorganised Workers (NDUW) mooted	Have potential for data privacy concerns and execution speed issue; still in phase of developing
	Body of Laws for Migrant Workers	A proposed framework could help states work together to enforce consistent labor protections and benefits on behalf of migrants	Not yet fully implemented; states have piecemeal policies

## THE INTER-STATE MIGRANT WORKMEN (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) ACT 1979:

The Act was specifically enacted to protect inter-state migrant workers. It makes it compulsory for contractors to register when they recruit migrant workers and provides details on their wage structure, accommodation, health and other welfare services. In practice though, very few comply with this law with countless employers not registering migrant workers.

1. **THE BUILDING AND OTHER CONSTRUCTION WORKERS (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) ACT, 1996:** As a significant number of migrant workers are working in construction, this Act seeks to regulate the working conditions and implement the welfare measures such as accommodation, health care facility and social security benefits of migrant workers. It also makes it obligatory to extract access for welfare schemes for construction workers. But bureaucratic shortcomings and little knowledge among workers has hampered its implementation.

2. **THE SOCIAL SECURITY ACT FOR UNORGANIZED WORKERS (2008):** This Act aims at providing social security to the unorganized sector workers, including the migrant Labour. It allows the formulation of welfare schemes with respect to health insurance, maternity benefit, and pension. But the failure to monitor its signatories and implement its provisions has left migrant workers with limited protection.

3. **THE SOCIAL SECURITY CODE, 2020:** The government merged several labor laws into four labor codes, the Code on Social Security, 2020 being one of them. The Code extends social security benefits to informal workers, gig workers and migrant workers. That would be an improvement but most of the work needs to be done at the state level, so it's unclear if that would actually happen.

## LACK OF LEGAL IMPLEMENTATION PROBLEMS

1. **UNAUTHORISED EMPLOYMENT:** Hundreds of thousands of migrant workers are informal and they cannot enjoy legal protection because it is hard to prove their work.

2. **INACCESSIBILITY TO WELFARE BENEFITS:** Most migrant laborers are not granted the benefits of government schemes owing to absence of identity proof or ration cards in the state in which they migrate.

3. **CIRCUMVENTION OF EMPLOYER RESPONSIBILITY:** Informal workers are left without legal protections, as numerous employers out maneuver labor legislation by hiring informally, bypassing their obligations under the law.

4. **INEFFECTIVE LAW ENFORCEMENT:** Labor law inspections and penalties are not enforced, creating a fertile ground for exploitation.

These gaps were starkly revealed by the COVID-19 crisis; thus, there is an increased demand for more robust legal frameworks and better enforcement to protect the rights of migrant workers.

## 3. EFFECTS OF COVID-19 ON MIGRANT WORKERS IN INDIA

Migrant workers in India suffered dearly due to the COVID-19 pandemic. Millions of workers faced unemployment, lack of wages, food and transportation options overnight due to the complete closure, and an unprecedented humanitarian crisis arose. The key challenges they encountered were:

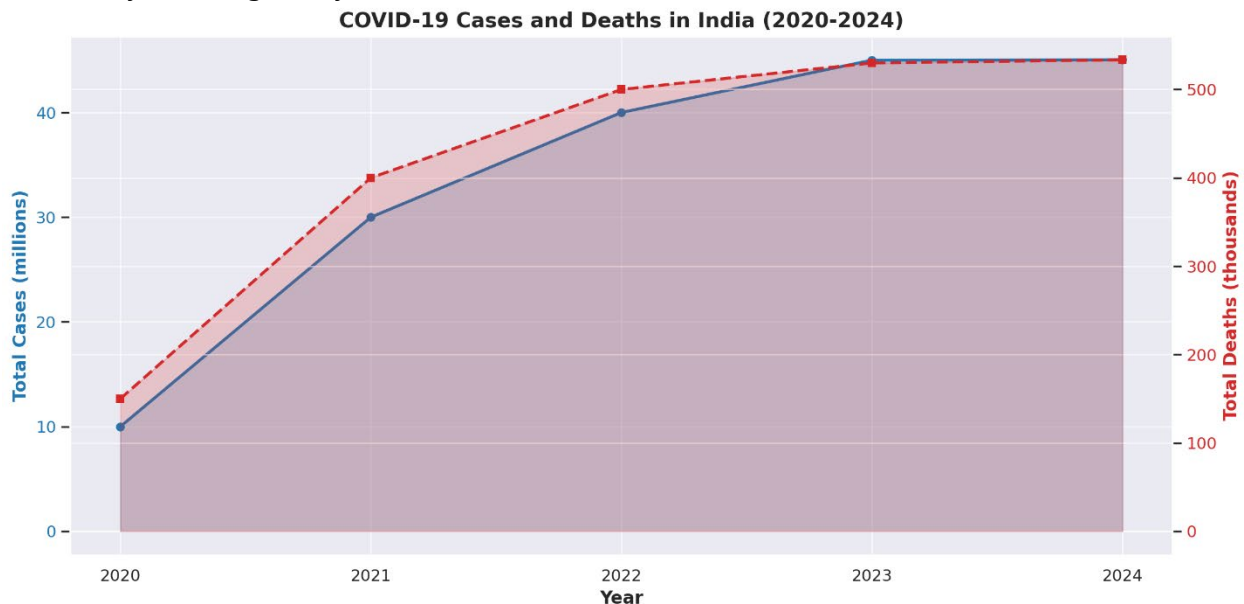


Chart 1: about covid-19 cases in India.

Source: From [https://en.wikipedia.org/wiki/COVID-19\\_pandemic\\_in\\_India](https://en.wikipedia.org/wiki/COVID-19_pandemic_in_India).

**1. LOSS OF EMPLOYMENT AND WAGES:** Industries, construction sites, restaurants and markets downed their shutters leading to large scale job losses due to the lockdown. Most migrant workers were working in the informal sector with no job security, so they lost their job immediately. Many had also been left unpaid for work done in the run-up to the lockdown, deepening their poverty and vulnerability.

**2. LACK OF FOOD AND SHELTER:** Migrant workers were left with no wages, no or almost no savings, they were unable to afford even basic amenities like food or shelter. Some were thrown out of rented homes after falling behind in their rent. The number of relief centers were not enough the poor workers had to be dependent on charity and food donations to survive as the government local centers were completely overwhelmed.

**3. WITHOUT TRANSPORT:** One of the most disturbing things about the crisis was that of transport for workers left stranded. The trains and buses were stopped, so millions had to walk home hundreds of kilometers. It caused horrific tales of exhaustion, hunger and mortal road traffic accidents.

**4. ABSENCE OF HEALTHCARE:** Because migrants work in crowded conditions with little access to health care, they were particularly hard-hit by COVID-19. A great number were turned away from getting treatment for their migraines and there were very few or even no places where they could get tested.

**5. THEY ARE EXCLUDED FROM GOVERNMENT RELIEF MEASURES:** The government announced various relief measures, including free food grains and cash transfers, but a large number of migrant workers could not avail of these benefits. Key among them was not having a common system that could connected migrant workers to welfare schemes across states.

**6. SOCIAL STIGMA AND DISCRIMINATION:** Migrant workers are seen as possible carriers of COVID-19, partly as a result of discrimination and social stigma. Many faced violence as they travelled home, with some even prevented from entering their villages, out of fear of contagion.

The COVID-19 pandemic revealed the systemic inequality towards migrant workers in the homeland of India. It realised the urgent need of the reforms of the policy, Legal framework and the effective, governmental intervention to safeguard them as well as the need to protect them in future.

#### 4. GOVERNMENT RESPONSE AND LEGAL RESPONSES — POLICY, RELIEF AND JUDICIARY

This article discusses the government response of the Indian State to the migrant labour crisis during the time of the COVID-19 pandemic through policy measures, relief programmes and legal interventions. However, some of these

responses were more effective than others, and many policies did not reach the most disadvantaged workers. This response can be broadly divided into immediate relief, legislative change, and judicial responses.

## 1. IMMEDIATE RELIEF MEASURES

After the lockdown, the government health several schemes to provide food and money help to migrant workers:

- A. **PRADHAN MANTRI GARIB KALYAN YOJANA:** Under PMGKY, the government had disbursed ₹1.7 lakh crore to pay free food grains, direct cash transfers and wage increase under the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA).
- B. **ONE NATION ONE RATION CARD (ONORC):** To tackle the issue of portability of ration cards, the ONORC scheme was launched for enabled migrants to draw subsidised food grains from any fair price shop in the country.
- C. **DIRECT CASH TRANSFERS:** ₹500 per month was transferred to the Jan Dhan accounts of women from poor households, but many migrant workers, most of whom are men, were left out of the distribution.
- D. **ARRANGEMENTS FOR SHELTER AND TRANSPORT:** Temporary shelters and free food centers were established for those workers who were stranded by the government. In May 2020, it also announced Shramik Special Trains to transport many numbers of migrants back to their home states.

But major gaps remained many workers still did not have bank accounts, identity documents, or ration cards. Relief distribution was also complicated by this as there was no centralized database of migrant labourers.

## 2. SHIFTS IN LEGISLATION AND POLICY

Amidst those challenges, the government put forth reforms under the new Labor Codes:

- A. **THE CODE ON SOCIAL SECURITY (2020):** This broadened the scope of social security to cover many informal and gig workers but remains unclear on implementation.
- B. **THE OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS CODE, 2020:** By requiring employers to register migrant workers, it sought to facilitate a standard of minimal conditions at the workplace. Yet these provisions have been poorly enforced.

## 3. JUDICIAL INTERVENTIONS

It was the Supreme Court and various High Courts which were able to actually keep the government on the right track:

- A. **THE MIGRANT WORKERS CASE (2020) [IN RE: PROBLEMS AND MISERIES OF MIGRANT WORKERS]:** The Supreme Court, on implied basis, took notice of the migrant workers crisis and issued directives that all the states are required to provide free access to food, transportation, and medical facilities for all people registered as workers.
- B. **GUJARAT MAZDOOR SABHA V. STATE OF GUJARAT (2020):** The Supreme Court rejected the State of Gujarat's ordinance seeking to suspend labor laws, reinforcing the need to uphold workers' rights. Judicial interventions offered some respite, but they came late — and often non-compliance with the directives of the courts persisted.

While the government took action to prevent, predict and remedy the crisis, it did so after failure to foresee and remedy with forward-thinking measures, and this resulted in avoidable suffering. The uncoordinated efforts of central and state governments added more blows to the execution of the policies.

## 5. CHALLENGES OF ENFORCEMENT OF LEGAL PROTECTION AND ACCOUNTABILITY

Even during COVID-19, there were many legal and structural obstacles facing migrant workers despite labor laws and emergency relief measures. Such gaps also make up for a near absence of protection mechanisms for one of the country's most vulnerable labor groups.

- 1. **NO CENTRALIZED LAW:** During the pandemic, there was no action on ground under the Inter-State Migrant Workmen Act, 1979, which was enacted to protect several categories of migrant workers. Few migrant workers were registered, employers and contractors seldom took the trouble to register them, making it hard to trace any when



the crisis ensued. The new labour codes seek to replace existing laws, however, the implementation of the same is still unclear. Many of the provisions are subject to state implementation, which creates a patchwork of labor protection.

**2. INSUFFICIENT DATA GATHERING AND IDENTIFICATION:** There are multiple failings when it comes to the governance of labour in India, however the absence of a national database of migrant workers is one of the most significant failures. Direct assistance was hard to provide by government agencies as records were on the same system and an up-to-date record of people was not available. a. These excluded workers from benefits due to:

- A. Inability of the migrants to port their ration cards prior to ONORC being fully realized.
- B. Absence of Aadhaar linking with government schemes.
- C. Workers are undocumented or not properly registered at their workplaces.
- D. Labor Rights: Poor Enforcement

The agencies tasked with enforcing labor laws were mostly unable to guarantee migrants received paychecks, safe working environments and social security. Common issues included:

- A. Employers who steal wages and face little consequence.
- B. Worsening work and living conditions, heightened risk of COVID-19
- C. Cancellation of labourers by contractors with absence of accountability on all occasions.

**3. LACK OF COORDINATION BETWEEN CENTRAL AND STATE GOVERNMENT**

- A. Management of migrant labor lies both with the centre and state but due to poor-coordination, there was policy inconsistency. For example:
- B. While some states provided transportation to migrants, others did not and made workers trek home.
- C. Discrepancies in different states' relief policies caused confusion and delays in aid distribution.

**4. DELAY OF JUSTICE AND BUREAUCRACY**

The enforcement of court orders protecting migrant workers continued to be weak. This legal victory just did not translate into changes in the real world, where government agencies tarried, leaving many migrant workers still suffering. It also called for better enforcement of labour laws, effective social security mechanisms, and stronger government action to protect the rights of migrant workers in the light of the pandemic.

## **6. CONCLUSION**

The pandemic of COVID-19 was a situation like never before, the fault lines of India as a state were exposed in the wake of the vulnerability of its own labor force, the issue of migrants was a huge test for the Indian state that has always fumbled when it comes to drafting effective labor regulations, the lack of social security with its triple lock of economic inadequacies and failure of the government accountability. Until the crisis emerged, migrant workers were an important hidden pillar of India's economy, and the ensuing debacle finally brought them into the limelight both for policymakers and for the public. The lockdown hastened thousands of workers to return home, making it clear that the government had not responded accordingly which is why there is always a need for reform in treating these workers. It reminded us that economic growth and labour exploitation are not two sides of the same coin, and that a strong and inclusive legal framework is needed to protect the most vulnerable members of our communities.

The government response included food relief, cash transfers, and the arrangement of transport, though these included little more than ad hoc measures that were only poorly implemented. These lack of bureaucratic access without documentation engulfed many migrant workers as obstacles apart from poor coordination between central and state governments. Allegedly, the legal framework to safeguard these workers, such as the Inter-State Migrant Workmen Act (1979), in practice faced inadequacies, primarily due to employer non-compliance and poor enforcement. Besides, the new labour codes, though ideal on paper, did not afford immediate succor during the crisis — the travails of migrant workers were compounded by the absence of effective implementation of the codes. Despite high policy commitments to legal protections, the legal implementation and enforcement of these protections were very limited, as evidenced by the pandemic.

The crisis revealed many glaring issues one of which was the lack of a consolidated database on migrant workers. The government could not provide substantial help without knowing exactly the number of workers employed, where they worked, and to where they migrated. To prepare for such crises in the future and to ensure the welfare schemes reach

them, a one-stop, digital database to map the migrant workers from state to state is imperative. Moreover, the One Nation One Ration Card (ONORC) scheme may be implemented in a more rigorous and focused manner to provide migrants food security no matter where they are located. Workers must also have social security benefits — health care, financial, etc. that should be portable, so that they can be protected from future economic shocks. And, as a second yet critical lesson to be learned from the pandemic, full accountability mechanisms should be enforced. All government agencies, employers and contractors should be responsible for migrant workers from fair wages to safe working conditions and social security. Robustly enforcing labor laws, including by implementing more inspections at worksites, and handing out strong penalties on those who violate labor laws would go a long way to prevent future abuses from occurring. The inter-state coordination should also be better, so that in times of crisis no worker is stranded. This will ensure that the state and central governments have a clear direction to implement policy as envisaged for migrant workers as well as a grievance redressal mechanism, and that there is no disconnect on policy and implementation between the state and the Centre in protecting the rights of workers by establishing a dedicated Migrant Workers' Commission.

Judiciary did step in for migrant workers' plight: The second factor that helped ease things for migrant workers is the role played by the judiciary during the pandemic, with the Supreme Court also asking governments to provide relief and transportation facilities. But these interventions were too little too late to prevent suffering. In the future, there needs to be a more active compliance mechanism, involving the judiciary, civil society and labour organisations, to guarantee that labour protection norms are enforced in a timely and effective manner. Labour courts that hear wage and unfair dismissal matters should be fast tracked so that workers are not left without remedies.

The COVID-19 crisis will hopefully shake policymakers out of their slumber and make them realize that they need to give the long-term labor reform agenda priority. Policy in the future should prioritize the establishment of a stable, equitable labor mechanism that offers support to workers in periods of recession and times of crises. A national plan to prepare for and respond to crises pertaining to migrant workers should be instituted, this includes provisions for and funding of emergency transport, a compulsory contribution by employers to a workers relief fund, income support guarantees during crisis. This can discourage the reliance on informal employment and allow migration to become more stable through investment in skill development and job security initiatives.

## CONFLICT OF INTERESTS

None.

## ACKNOWLEDGMENTS

None.

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