



INDIAN JOURNAL OF
LEGAL REVIEW

VOLUME 4 AND ISSUE 3 OF 2024

INSTITUTE OF LEGAL EDUCATION



INDIAN JOURNAL OF LEGAL REVIEW

APIS – 3920 – 0001 | ISSN – 2583-2344

(Free and Open Access Journal)

Journal's Home Page – <https://ijlr.iledu.in/>

Journal's Editorial Page – <https://ijlr.iledu.in/editorial-board/>

Volume 4 and Issue 3 of 2024 (Access Full Issue on – <https://ijlr.iledu.in/volume-4-and-issue-3-of-2024/>)

Publisher

Prasanna S,

Chairman of Institute of Legal Education (Established by I.L.E. Educational Trust)

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 94896 71437 – info@iledu.in / Chairman@iledu.in



© Institute of Legal Education

Copyright Disclaimer: All rights are reserved with Institute of Legal Education. No part of the material published on this website (Articles or Research Papers including those published in this journal) may be reproduced, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior written permission of the publisher. For more details refer <https://ijlr.iledu.in/terms-and-condition/>



A STUDY ON MIGRANTS AND THEIR HUMAN RIGHTS

AUTHOR – R. MADHUMITHA, STUDENTS AT SCHOOL OF EXCELLENCE IN LAW, THE TAMILNADU DR. AMBEDKAR LAW UNIVERSITY, CHENNAI

BEST CITATION – R. MADHUMITHA, A STUDY ON MIGRANTS AND THEIR HUMAN RIGHTS, INDIAN JOURNAL OF LEGAL REVIEW (IJLR), 4 (3) OF 2024, PG. 367-370, APIS – 3920 – 0001 & ISSN – 2583-2344.

Abstract:

The study delves into the connection between migrants and their human rights. Migrants are individuals who leave their home countries in search of opportunities such as education, employment, or to reunite with family. International human rights law, such as the UDHR (Universal Declaration of Human Rights) and the International Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families, advocates for the rights of migrants. However, the enforcement of these laws and policies varies widely across the world due to economic, social, and political factors. This research aims to provide insight into the identity of migrants, the reasons for their migration, and the challenges they face, while also exploring their legal rights. The study evaluates the human rights framework that applies to migrants, highlights the gaps in policy implementation, and emphasizes the need for policies that respect and protect the rights of migrants. Ultimately, it recommends that governments strive to strike a balance between the human rights of migrants and the development of policies.

Keywords: Migrants, human rights, legal framework, Migration, Movement.

1. Introduction:

The act of moving is an essential aspect of human existence. Migration is a movement where the peoples move from one place to another for their fundamental needs. Emigrants depart from their country, while immigrants enter a new country. The migration of people has an impact on both the place they leave and the place they choose to settle. There are various reasons for their movement, including social, economic, political, and environmental factors. Fundamentally, migration involves two key factors: push factors, which drive individuals to move due to negative circumstances like unemployment, war, and limited educational opportunities; and pull factors, which attract people to new places due to positive aspects such as job opportunities, improved living standards, and better education and healthcare facilities.

Migrants are entitled to the same human rights as all individuals. Numerous human rights treaties explicitly prohibit discrimination based

on origin and call on states to ensure equal protection of human rights. Additionally, special protections are afforded to migrants, particularly vulnerable groups, who face risks in the workplace, during transit, and in detention. The rights granted to migrants, including access to social security, are also contingent on the treaties ratified by a state.

The Indian constitution grants fundamental rights, providing basic freedoms for movement, residence, and earning a livelihood of choice within the country. The International Organization of Migration reports that there are approximately one billion migrants worldwide, consisting of 214 million international migrants and 740 million internally displaced persons. Both less and more developed countries face diverse challenges and opportunities associated with migration.

Although Adam Smith advocated for the free movement of goods, capital, and people as a key aspect of the market system, nations have

been less open to the movement of people. In developing nations, persistent unemployment, poverty, and economic insecurity have driven millions to seek livelihoods in developed countries. Migrants are susceptible to human rights violations as they are not citizens of the receiving states and often live in precarious and impoverished conditions. Female migrants encounter additional challenges, facing human rights violations based on their migrant status and gender.

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Migrant Workers Convention) defines a migrant worker as an individual engaged. However, this definition of a migrant worker should not exclude migrants who may not be adequately compensated for their work in the host country.

2. Review of literature:

1. Betts (2017): In his article he emphasize the need for comprehensive legal protections that extend beyond national borders, advocating for a more robust international response to migration crises.

2. Zetter (2017): In this article he analyze case studies from various regions, illustrating how policies often prioritize border security over humanitarian concerns, leading to increased vulnerability for migrants.

3. Abhishek Pandey (2018): This article explains about the legal rights of migrants and it also states the challenges faced by the migrants during their migration along with the rights available to them.

4. Vasquez (2021): In this article it discusses how the pandemic exacerbated existing inequalities, revealing gaps in health care access and protections for migrants. This situation calls for renewed attention to human rights within the context of global health crises.

3. Statement of problems:

1. What are the human rights problems do migrants face during their journey?
2. What are the international conventions that protects the migrants from their problems?

3. How the governments can track and address the administrative failures that leave migrants without access to essential services?

4. How can governments improve training and resources for officials to ensure proper implementation of migrant protection policies?

4. International Conventions:

All individuals, regardless of their immigration status, have the right to international human rights. Whether they are citizens or migrants, and whether they are documented or undocumented, everyone in the country is entitled to the right to life, liberty, freedom from slavery, freedom from arbitrary arrest and detention, and equal protection under the law, among other fundamental human rights. These rights are protected by international agreements such as the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Convention on Protection of the Rights of All Migrant Workers and Members of their Families. The following are the treaties which protects the human rights of migrants:

1. UDHR:

The Universal Declaration of Human Rights (UDHR) was the first document in the history of human rights. The rights given in these conventions are inalienable and apply to all human beings. The Declaration lists 30 rights and freedoms that belong to everyone and cannot be taken away. The UDHR was adopted by the newly established United Nations on 10 December 1948.

2. International Covenant on the Protection of All Migrant Workers and their Family Members:

This was the first effort to universally cover migrants and their rights. It ensures full protection for migrants and their families. The Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CRMW) aims to protect migrant workers and

their families from exploitation and human rights violations regardless of their migration status.

The UN General Assembly adopted the Convention on 18 December 1990, and it came into force on 1 July 2003. Part III of the Convention, Articles 8 through 35, lists the rights of migrant workers and their families, some of which are stipulated generally in other treaties.

3. International Covenant on Civil and Political Rights:

This is a multilateral treaty adopted by the UN General Assembly on December 16, 1966, and it came into force on March 23, 1976. The treaty obliges its parties to uphold the civil and political rights of individuals, including freedom of religion, freedom of assembly, and the right to life, among others.

4. International Covenant on Economic, Social and Cultural Rights:

The International Covenant on Economic, Social and Cultural Rights (ICESCR) was adopted by the United Nations General Assembly on 16 December 1966 and came into force on 3 January 1976. As it was one of two international treaties that constitute the 'International Bill of Human Rights'.

5. Challenges and Problems of Migrants along with Legal Rights:

1. Equal pay for equal work

Till now migrants are forced to work many works but they are not paid reasonably. The amount paid to them was not equal to the amount of work they did. They are also having the right to get the remuneration for their job. Article 23 of UDHR, Article 7 of International covenant on economic, social and cultural rights and Article 11 of Elimination of all forms of discrimination against women talks about the right of equal pay for equal work for humans.

2. Discrimination

Migrants are the one who are more vulnerable to discriminate because of their poor and illiterate status. Discrimination against migrants

means treating them unfavorably because they are from the different country or part of the world. Article 7 of the Universal Declaration of Human Rights states that 'All are equal before the law and are entitled without any discrimination to equal protection of the law.' This means that everyone is equal in the eyes of law and all persons should not be treated without any discrimination. Article 11 of Elimination of all forms of discrimination against women states about right against discrimination.

3. Forced labour :

Normally many of the migrants are forced to work in the construction and other environment because of the contractual agreements signed by them for their basic needs. Article 4 of UDHR states about the prohibition of slavery and forced labor. Forced labor convention, 1930 explains about the right against forced labour.

4. Freedom of movement :

All human beings are entitled to freely move from one place to another and settle for their work status. Article 13 of UDHR states about the freedom of movement of the humans. Article 39 of International covenant on protection of all migrant worker and their family members talks about these rights.

5. Access to health care:

Migrants having the right to access to health and other things. Article 12 of International Covenant on Economic, Social and Cultural Rights states that all human beings has the right to the enjoyment of the highest attainable standard of physical and mental health. Article 28 of International covenant on protection of all migrant worker and their family members talks about these rights.

6. Arbitrary arrest and detention :

All the individuals, including migrants are not subject to arbitrary arrest and detention. The state should not arrest or detain them. Article 9 of International Covenant on Civil and Political Rights states no one shall be subjected to

arbitrary arrest and detention. Article 16 of International covenant on protection of all migrant worker and their family members talks about the right of migrant workers and their family members against arbitrary arrest and detention.

6. Result and Discussion:

From this research there are many causes of migration. There is employment, education, lack of security, marriage and other factors are responsible for migration. According to 1991 census about 8.8 percent of migrants migrated for employment. People migrated in large number from rural to urban areas for employment. The agriculture based of rural areas not provide employment to all the people. Contrary to this, urban areas provide a vast scope for employment in industries, trade, transport and services.

In rural areas lack of educational facility for higher education and rural people have to migrate to the urban cities for this purpose. And finally, there may be a political disturbance and conflicts make them to move. Legislative protection against labor discrimination of migrants is lacking in most countries, making it challenging for migrant workers to access legal protection from abuse. Kuwait and Saudi Arabia, both home to many migrants, exclude all migrant workers from national social and labor laws. Migrant workers often fear reprisal and lack the ability to participate in the political process to ensure legal protection as non-citizens. Additionally, migrants may have limited knowledge of the national language, laws, and practices, leaving them unaware of their rights. Consequently, they often struggle to challenge or seek remedies for violations of their human rights.

The involvement of all stakeholders, such as local governments, trade unions, employer's organizations, national human rights bodies, private sector, recruitment agencies, security and justice service providers, civil society and youth organizations, and migrants themselves (including representative groups of migrant

women and children), is necessary for the development of migration policies that encompass inclusion, non-discrimination, and the protection of human rights

Migrant workers may face indefinite detention, deportation, and arbitrary expulsion. When they receive expulsion orders, they are often unable to contest them in court. Undocumented migrant workers and "irregular migrants" - individuals who have been victims of human smuggling or trafficking - are considered "irregular" if they entered the country illegally, used false documents, misrepresented themselves as students or tourists while intending to work, or continued working after the end of an employment contract. Even if they experience human rights violations, they may not seek legal remedies due to the threat of deportation. The lack of legal status in the host country may force undocumented migrants to accept poor working and living conditions. Additionally, without documentation, they cannot access essential government services like healthcare and education.

7. Suggestions:

Empowering migrants by safeguarding their right to access relevant information and support in a language and format they comprehend is crucial for enabling them to make informed decisions and assert their rights effectively, including through accessing justice.

1. To form an independent body to oversee the migration departments. To monitor their functions and make them accountable for their work.
2. Creating e-portals to track the status of their applications on documentation or requirements.
3. To make sure the clarity in national immigration policies and laws, and align with standards of international human rights. Unclear laws often make administrative irregularity.
4. Strengthening anti-discrimination policies to protect migrants from negligence in administrative adjudications.

5. By the way of getting citizenship in the country, the migrants can hold their human rights. Indian constitution provides the way to get citizenship by the ordinary residence of 14 years.
6. There is lack of awareness in the minds of migrants because of many of them are illiterate. They didn't have the knowledge about the rights available to them. So, it's the duty of the administration to provide a awareness among the migrants about their human rights.
7. Labor legislation should be made strict rules with necessary simplification and modifications in the laws
8. In order to protect the migrants from sexual harassment and other work-related problems there should be a grievance portal for them.

8. Conclusion:

Migrants often face significant obstacles in safeguarding their human rights. These challenges arise from various factors, such as restrictive immigration policies, insufficient access to legal protections, discrimination, and exploitation. Particularly undocumented migrants are at risk of abuse, including poor working conditions, lack of healthcare access, and violations of their right to seek asylum. Protecting the rights of migrants necessitates increased international cooperation, compassionate policies, and a commitment to addressing the underlying causes of migration, such as poverty, conflict, and climate change. Comprehensive legal frameworks and support systems are crucial to ensuring that migrants can live with dignity and have their fundamental rights respected and upheld. While international human rights principles are universally applicable and generally apply to all citizens and migrants without distinction, the actual rights and treatment of migrants vary significantly from one country to another.

The importance of Human Rights Conventions, including the Convention which Protect the Rights of the Migrant Workers and

their Families, that all migrant workers are protected by the international human rights framework. Regarding irregular migrants, the Convention acknowledges that workers who are non-documented or in an irregular situation are often employed under less favourable working conditions than other workers. Even though the international conventions apply to all human beings, migrants are vulnerable to discrimination because of their poor migration status. In order to prevent this, there should be a proper and strict laws to be enforced and respect the dignity of the migrants and human rights of them.

9. Reference:

1. <https://www.scholarshipsads.com> – Migration- types-factors.
2. <https://www.ohchr.org> – International covenant on the protection of the rights of all migrant workers and members of their families.
3. <https://ijrcenter.org> – Immigration and Migrants Rights
4. The Human Rights of Non- citizens by David Weissbrodt.