

THE NEED FOR THE PROTECTION OF MIGRANT WORKERS: A CRITICAL STUDY OF SAFEGUARDS UNDER INDIA'S OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS CODE, 2020

AUTHOR – NEHAA C S, STUDENT AT SCHOOL OF EXCELLENCE IN LAW, THE TAMILNADU DR. AMBEDKAR LAW UNIVERSITY

BEST CITATION – NEHAA C S, THE NEED FOR THE PROTECTION OF MIGRANT WORKERS: A CRITICAL STUDY OF SAFEGUARDS UNDER INDIA'S OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS CODE, 2020, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 6 (4) OF 2026, PG. 1067-1072, APIS – 3920 – 0001 & ISSN – 2583-2344

Abstract:

Migration for employment is a crucial aspect of modern labor markets; however, migrant workers continue to be one of the most at-risk groups within the workforce. In India, the re-regulation of their rights through the Occupational Safety, Health and Working Conditions Code, 2020 (OSH Code) signifies a fundamental change from the original Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979. Nevertheless, the new framework presents both improvements and notable setbacks. This article provides a critical analysis of the necessity for migrant worker protection, exploring the definition of "migrant worker" as outlined in the OSH Code, the essential protections it offers, and the ongoing deficiencies in enforcement and coverage. It contends that, despite the Code's formal acknowledgment of wider categories of migrant workers and their rights to equal pay, safe working environments, housing, and the portability of social security, exclusions based on thresholds, wage ceilings, and the ongoing exclusion of intra-state migrants hinder the realization of these rights. The article concludes with a series of policy suggestions designed to enhance legal protections and institutional frameworks for safeguarding migrant workers in India.

Key words: migration, occupational safety, inter-state, occupational safety, migrant worker, intra-state

Introduction:

Migration for employment, such as moving from rural to urban areas, transitioning between States, or shifting from informal-sector jobs to construction-sector roles, has emerged as a significant aspect of India's economic framework. Migrant workers are predominantly found in high-growth yet high-risk industries like construction, manufacturing, transport, and domestic work. Despite their critical role in the economy, numerous migrant workers endure precarious working conditions, receive low

wages, and have limited access to social-security benefits.

The necessity for safeguarding migrant workers stems from three interconnected imperatives:

- i) Human rights and dignity – as mobility and nationality should not undermine fundamental rights;
- ii) Labour law and social justice concerns – since the unchecked exploitation of migrants adversely affects wages and working conditions for all workers; and

iii) Economic efficiency and fiscal stability considerations – because healthy, protected workers tend to be more productive and place less strain on public health and social security systems.

India's labour law reforms, culminating in the introduction of new Labour Codes, including the OSH Code, provide an opportunity to reconsider these protections. The OSH Code, in particular, redefines the term "migrant worker" and alters the regulatory framework that encompasses them. This article explores how the OSH Code both protects and fails to protect migrant workers, arguing that effective safeguarding will necessitate lowering thresholds, broadening coverage, and enhancing enforcement.

Definition of "migrant worker" under the OSH Code:

The OSH Code builds on the **Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979** but re-shapes the definition of "inter-state migrant worker" (ISMW). Under the earlier framework, an inter-state migrant workman was understood as a person recruited by or through a contractor in one State for employment in an establishment in another State, whether with or without the knowledge of the principal employer. This definition largely excluded workers who were directly hired by the principal employer across State lines.

The OSH Code, however, adopts a broader and more inclusive definition of "inter-state migrant worker", which includes:

- i) Any person employed in an establishment who has been directly recruited by the employer or indirectly through a contractor in one State and posted to another State; and
- ii) A person who independently or through a contractor moves from one state to another, employed directly or indirectly for wages in an establishment, earning up to ₹18,000 per month.¹⁹⁹³

The OSH Code's migrant worker protections are strictly limited to inter-state migrants. Workers who move within the same State from one district to another (so-called intra-state migrants) remain outside the special migrant worker regime, despite often facing similar conditions of vulnerability. Moreover, the Code applies these protections only to establishments employing ten or more inter-state migrant workers, a threshold that excludes many small scale and micro-enterprises where most migrants are actually employed.

How the OSH Code protects migrant workers' rights:

The OSH Code offers several significant protections and is applicable to establishments that employ ten or more interstate migrant workers.

(a) Equal treatment and wages

Interstate migrant workers must be paid the same salaries and given the same statutory benefits as other workers of the establishment, according to the OSH Code. This comprises:

- i) The Code on Wages, 2019's minimum wages and overtime compensation;
- ii) Statutory perks and allowances that apply to every employee in the same establishment

Because it prohibits employers from underpaying migrants on the grounds that they are temporary, mobile, or "outsiders," this responsibility is essential.

(b) Safe working conditions and health

Employers are required under the OSH Code to provide all workers, including migrants, with safe and healthy working conditions by:

- i) Removing risks and making sure the property complies with general safety and health regulations;
- ii) Offering protective gear, sufficient training, and, if necessary, access to on-site first aid and medical facilities.

¹⁹⁹³ Sec 2(zf) of OSH Code, 2020

These responsibilities are particularly crucial because they immediately lower the risk of accidents and occupational illnesses in industries like factories and construction, where migrant workers are highly concentrated.

(c) Housing, accommodation, and journey allowances

Certain welfare-oriented obligations pertaining to inter-state migrant workers are still included in the Code. These include:

- i) The provision of suitable housing or accommodation in situations where employees must remain outside of their home states.
- ii) Travel reimbursements to make migration and return trips easier.

Furthermore, the OSH Code architecture is in line with welfare and social security benefit mobility policies like:

- i) Portability of PDS (ration) entitlements across the states of origin and destination; and
- ii) Portability of Building and Other Construction Workers (BOCW) welfare-fund benefits, allowing migratory construction workers to utilise social security programs in both states. These measures are intended to lessen the social and economic upheaval brought on by migration.

(d) Registration, identification, and grievance mechanisms

The OSH Code takes into account the registration of inter-state migrant workers and frequently demands employers or contractors to present identification cards or documentation. By increasing accountability and visibility, this registration lowers the possibility that migrants may become "invisible" in the labour market system.

The Code additionally requires for the establishment of grievance redressal systems, such as 24x7 toll-free helplines, where migrant workers can file complaints regarding their pay, working conditions, or exploitation. These

procedures are meant to give migrants a practical means to pursue justice without worrying about retaliation.

(e) Social security and portability

The Code on Social Security, 2020, which offers social security coverage for migrant and unorganised sector workers including life disability coverage, health, maternity, pension, and accident insurance, works in collaboration with the OSH Code. By registering on the e-Shram portal, migrant workers can access their social security benefits in both their home and destination states.

Limitations:

Despite these formal protections, the OSH Code's actual safeguarding of migrant worker rights is weakened by several structural and policy limitations.

(a) The 10-worker threshold and exclusion of small establishments

The most significant regression is the increase in the threshold from the Inter-State Migrant Workmen Act, which applied to establishments employing five or more inter-State migrant workers, to the OSH Code, which applies only where there are 10 or more such workers. This change excludes a large share of small-scale factories, micro-construction sites, retail-sector sites, and informal sector units where most migrant workers are employed. In India, over 70 per cent of establishments employ fewer than six workers, and many of these units host inter-State migrant labour without triggering the OSH Code's special migrant worker provisions. Thus, the practical coverage of the Code is much narrower than the statutory definition suggests.

(b) Wage-ceiling exclusions

The OSH Code indicates that the migrant worker protection scheme is limited to workers earning below a specified monthly wage ceiling (₹18,000). Workers above this ceiling are excluded from the OSH Code's special migrant worker protections, even though vulnerability

often stems from mobility and informality, not from income level. This income based exclusion is inconsistent with the underlying rationale of protecting mobile workers who leave their families and communities to work in unfamiliar environments.

(c) Abolition of key welfare obligations

The OSH Code abolishes the 50 per cent displacement allowance that contractors were required to pay to inter-state migrant workers under the Inter-State Migrant Workmen Act. This allowance was meant to provide upfront financial security during the initial phase of migration. Its removal reduces the cash flow cushion for workers who often bear the costs of leaving their homes and families.

The Code also removes the strong inquiry powers that both the origin and destination States had under the 1979 Act to investigate migrant worker conditions and hold employers or contractors accountable. These powers helped monitor whether migrant workers were actually receiving their statutory entitlements; their dilution weakens the overall enforcement architecture.

(d) Exclusion of intra-state migrants

The OSH Code's special protections continue to apply only to inter-state migrants, that is, workers who move from one State to another. Workers who move within the same State (intra-state migrants), even if they are equally mobile and vulnerable, are not covered by the specific migrant worker provisions. In practice, a large proportion of rural-to-urban migration in India occurs within the same State, meaning that many vulnerable migrants fall outside the Code's targeted protections.

(e) Weak enforcement and awareness

Even where the law is formally in place, enforcement remains weak because:

- i) Labour inspection capacity is limited, especially in the informal sector;
- ii) Many migrant workers are unaware of registration requirements, their e-Shram

entitlements, or the grievance mechanism helplines; and

- iii) Fear of deactivation or deportation discourages workers from lodging complaints.

These factors mean that the OSH Code's protections often remain paper rights rather than lived realities for many migrant workers.

Recommendations:

Taking into consideration these constraints, the necessity to protect the rights of the migrant workers needs both doctrinal development and organizational support. The following actions could be taken to fill in the existing gap between the OSH Code's provisions and results.

1. Lower the threshold or remove it for migrant worker coverage

The threshold of 10 inter-state migrant workers should be reduced, or preferably abolished, so that even small scale and micro establishments are required to comply with minimum wage, safety, and social security obligations toward migrant workers. This would ensure that the regulatory net covers the large segment of informal sector employment where most migrants actually work.

2. Extend protections to intra-state migrants

The intra-state migrant workers who migrate from one part of a particular State to another within the same State to earn their livelihood deserve a similar legal protection under the OSH Code. Intra-State migrant workers may be incorporated into the definition of the term "migrant worker" or an alternative framework may be set up.

3. Re-introduce or re-design the displacement allowance mechanism

The abolition of the 50 per cent displacement allowance under the 1979 Act has weakened the financial security of migrant workers during the initial phase of migration. The State could consider reintroducing a migration fee reimbursement scheme or a temporary cash transfer mechanism to help workers cover

upfront travel and settlement costs, especially in cases of sudden migration (for example, during economic shocks or disasters).

4. Abolish or raise the wage-ceiling limitation

The income based exclusion of higher earning migrant workers is conceptually and practically flawed. The migrant worker protection regime should either abolish the wage ceiling or raise it significantly, so that protection is tied to mobility and informality, not to a worker's income level.

5. Strengthen inspection and grievance mechanisms

The OSH Code's 24x7 helplines and grievance redressal mechanisms must be publicized widely in workers' own languages and supported by quick, effective response procedures. Labour inspection capacity should be expanded, with a focus on high migration density sectors such as construction, brick kilns, and agriculture.

6. Enhance registration and awareness about e-Shram

Many migrant workers are unaware that they qualify for social security and portability benefits through the e-Shram portal. The central and State governments should launch multilingual awareness campaigns and on-site registration drives at construction sites, transport hubs, and border checkpoints to ensure that migrant workers can easily register and access their entitlements.

7. Ensure coordination with the Code on Social Security, 2020

The OSH Code's framework for housing, journey allowances, and identification should be fully aligned with the Code on Social Security, 2020, so that migrant worker registration automatically triggers social security rights. This would create a seamless protection chain from employment to social security portability.

Conclusion:

The need for the protection of migrant workers emerges due to the convergence of the three

factors: human rights, labour laws, and development of the economy. This is reflected in the OSH Code through the expansion of the concept of an "inter-State migrant worker," who may be either directly hired or self-migrated and is guaranteed equal payment, decent working environment, accommodation facilities, and the portability of welfare and social security benefits. In its current form, however, the Code fails to live up to these expectations in view of the following limitations: the 10-worker threshold, wage ceiling exclusions, abolition of the displacement allowance, and continued exclusion of intra-State migrants.

A rights-based migration and labour policy approach, utilizing the positive elements of the OSH Code while addressing its gaps and thresholds, will change migrant-worker protection from a partial and legalistic approach to a real one.

References:

Occupational Safety, Health and Working Conditions (OSH) Code – Fact Sheet, Press Information Bureau, 21 November 2025, available at –

<https://www.pib.gov.in/FactsheetDetails.aspx?Id=150475®=3&lang=2>

Corrida Legal, Legal Rights of Inter-State Migrant Workers Under the OSH Code, 5 August 2024, available at – <https://corridalegal.com/legal-rights-of-inter-state-migrant-workers-under-the-osh-code/>

The Leaflet, Why India's New Labour Codes Leave Migrant Workers Behind, 30 March 2026, available at – <https://theleaflet.in/labour-law/invisible-by-design-why-indias-new-labour-codes-leave-migrant-workers-behind>

Rupin Chopra and Apalka Bareja, India: Changes in New Labour Code, 22 June 2021, available at – <https://ssrana.in/articles/india-changes-new-labour-codes/>

Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, s. 2(e).



INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]

VOLUME 6 AND ISSUE 4 OF 2026

APIS – 3920 – 0001 (and) ISSN – 2583-2344

Published by
Institute of Legal Education

<https://iledu.in>

Beriya, Kokila. "Analysing the Impact of New Labour Code on Workers Safety in India: A Comparative Study of Old Acts and OSHWC Code, 2020." *Issue 3 Int'l JL Mgmt. & Human.* 6 (2023): 2106.

