

LEGAL RIGHTS AND PROTECTION OF INTER-STATE MIGRANT WORKERS UNDER THE OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS CODE, 2020

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BEST CITATION – SHRI RAKSHA T S, LEGAL RIGHTS AND PROTECTION OF INTER-STATE MIGRANT WORKERS
UNDER THE OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS CODE, 2020, *INDIAN JOURNAL OF
LEGAL REVIEW (IJLR)*, 6 (5) OF 2026, PG. 267-272, APIS – 3920 – 0001 & ISSN – 2583-2344.

ABSTRACT

India is home to one of the largest internal migrant populations in the world, with millions of workers crossing state boundaries annually in search of their livelihoods. These workers have occupied a legal position. The Occupational Safety, Health and Working Conditions Code, 2020 consolidated and replaced thirteen central labour statutes, including the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, and introduced an expanded framework of rights and protections for inter-state migrant workers. This paper, analyses the specific entitlements it creates for migrant workers – including wage equality, journey fare, benefit portability, and grievance redressal – and situates these provisions within the broader constitutional framework established by landmark judicial pronouncements. This paper examines the evolution of the legal framework for inter-state migrant workers, critically analyses the rights and protections under the OSH Code, and evaluates its implementation challenges and implications for the welfare of migrant workers.

Keywords: Inter-State Migrant Workers, OSH Code 2020, Labour Law, Occupational Safety, Wage Portability, ISMA 1979,

I. Introduction

The migration of workers across state borders constitutes one of the most under-addressed dimensions of India's labour market. Workers from economically disadvantaged states such as Bihar, Odisha, Jharkhand, Uttar Pradesh, West Bengal, and Rajasthan routinely migrate to more industrialised destinations – Maharashtra, Delhi, Gujarat, Karnataka, and Tamil Nadu – in pursuit of employment in construction, manufacturing, agriculture, and domestic services. Migrant labour's contribution to national output is substantial, accounting for approximately ten percent of India's Gross Domestic Product.²⁶⁴

The Inter-state migrant workers have faced adversities like sub-minimum wages, hazardous working conditions, inadequate housing, denial of social security benefits, and an almost total absence of institutional recourse. The principal pre-existing legislation, the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 (ISMA),²⁶⁵ was designed to address these conditions, but suffered from weak enforcement, narrow applicability, and regulatory fragmentation across states. The enactment of the Occupational Safety, Health and Working

²⁶⁴Livemint, 'Why India's Migrants Deserve a Better Deal' (Livemint, 18 May 2020) <<https://www.livemint.com/news/india/why-india-s-migrants-deserve-a-better-deal-11589818749274.html>> accessed 1 April 2026. Migrant labour contributes approximately 10% to India's GDP.

²⁶⁵Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 (No. 30 of 1979).

Conditions Code, 2020²⁶⁶ marked a moment in labour reform, consolidating thirteen central labour laws into a single legislative instrument and broadening the scope of protection available to inter-state migrant workers.

II. Legislative History: From ISMA 1979 to the OSH Code 2020

The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 was enacted following recommendations of the First National Commission on Labour and was the first legislation to comprehensively address the conditions of employment, welfare, and wages of workers recruited across state lines. The ISMA operated on a contractor-mediated model of regulation: its definition of 'inter-state migrant workman' was confined to persons 'recruited by or through a contractor in one state for employment in an establishment in another state,'²⁶⁷ thereby excluding the large category of workers who migrate independently without a formal recruitment intermediary.

The ISMA required registration of establishments employing five or more inter-state migrant workers and imposed specific obligations on contractors, including payment of displacement allowance, journey allowance, and equal wages. Notwithstanding these provisions, the Act was widely criticised for its ineffectiveness. A combination of low employer compliance, inadequate inspection machinery and vulnerability of individual workers to contractual coercion.

In 2002, the Second National Commission on Labour recommended a comprehensive consolidation of central labour laws to reduce multiplicity, and promote uniform standards.²⁶⁸ This led to the passage of four Labour Codes in 2019 and 2020, covering wages, industrial relations, social security, and occupational safety. The OSH Code 2020 subsumed the ISMA along with twelve other statutes, including the Factories Act, 1948, the Mines Act, 1952, and the Contract Labour (Regulation and Abolition) Act, 1970. For inter-state migrant workers, this consolidation brought both significant advances and some regressions, which are examined in detail below.

III. Definitional and Structural Framework under the OSH Code

3.1 Definition of Inter-State Migrant Worker

The OSH Code 2020 defines 'inter-state migrant worker' under Section 2(zr) as a person who has been recruited, directly by the employer or indirectly through a contractor, in one state for employment in an establishment situated in another state, or who has come on his or her own from one state and obtained employment in an establishment in another state.²⁶⁹ The Code acknowledges that a substantial proportion of inter-state labour migration occurs even outside formal recruitment channels.

3.2 Applicability Thresholds

Chapter XI, Part II of the OSH Code governs the special provisions applicable to inter-state migrant workers.²⁷⁰ Section 59 of the Code provides that these provisions apply to every establishment in which ten or more inter-state migrant workers are employed, or were employed on any day of the

²⁶⁶The Occupational Safety, Health and Working Conditions Code, 2020 (No. 37 of 2020), received Presidential assent on 28 September 2020 and was enforced on 21 November 2025.

²⁶⁷ ISMA 1979 (n 2), s 2(e). Under the ISMA, the threshold for applicability was five or more inter-state migrant workers.

²⁶⁸Second National Commission on Labour, Report of the National Commission on Labour (Ministry of Labour and Employment, Government of India, 2002).

²⁶⁹OSH Code 2020 (n 1), s 2(zr): an inter-state migrant worker is one recruited by or through a contractor from one state for employment in an establishment in another state, or who has come on his own from one state and obtained employment in another state.

²⁷⁰ibid, Part II of Chapter XI (ss 59–61).

preceding twelve months. This threshold represents a doubling of the corresponding threshold under the ISMA 1979, which covered establishments employing five or more such workers.²⁷¹

Additionally, the Code restricts its wage-based applicability to workers earning less than Rs 18,000 per month, leaving higher-earning migrant workers outside the scope of the relevant protective provisions. These threshold-related limitations constitute a structural gap in the legislation that merits legislative attention.

IV. Legal Rights and Entitlements of Inter-State Migrant Workers

4.1 Equal Wages and Working Conditions

Section 60(1)(a) of the OSH Code imposes a duty on every contractor or employer of an establishment employing inter-state migrant workers to ensure suitable conditions of work, having regard to the fact that such workers are required to work in a state different from their own.²⁷² Critically, the Code mandates that inter-state migrant workers receive the same wages and benefits – including benefits under the Employees' State Insurance Act, 1948 and the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 – that are available to other workers in the establishment.²⁷³

4.2 Journey Fare and Travel Entitlements

Under Section 60(1)(c) of the Code, every inter-state migrant worker is entitled to a lump-sum fare for a to-and-fro journey to their native place from the place of employment.²⁷⁴ The manner of payment, including minimum service period for entitlement, periodicity, and class of travel, is to be prescribed by the appropriate government. This provision replaces the 'displacement allowance' under the ISMA 1979, which compensated workers for the immediate costs of relocation.

4.3 Portability of Benefits

Among the most transformative provisions introduced by the OSH Code for migrant workers is the portability of welfare benefits. Section 60(2) mandates the framing of government schemes to provide inter-state migrant workers with the option of accessing their Public Distribution System (PDS) entitlements either in their native state or in their state of employment.²⁷⁵ Furthermore, Section 60(2)(b) provides benefits from the Building and Other Construction Workers' Welfare Fund in the destination state for migrant workers engaged in construction.²⁷⁶ These provisions, if effectively implemented, have the potential to transform the welfare landscape for migrant workers by decoupling social security entitlements from state of domicile.

4.4 Registration, Identification, and Documentation

The OSH Code mandates the registration of inter-state migrant workers by both contractors and employers. Section 60(3) and associated provisions require employers and contractors to maintain a register of inter-state migrant workers and provide them with identification cards.²⁷⁷

²⁷¹OSH Code 2020 (n 1), s 59(1). The applicability threshold was raised from five workers (under ISMA) to ten workers, a change criticised by labour rights scholars as leaving smaller establishments unregulated.

²⁷²OSH Code 2020, s 60(1)(a).

²⁷³ibid, s 60(1)(b). ESI and EPF benefits were previously available only to workers in specific sectors covered by the respective parent Acts.

²⁷⁴ibid, s 60(1)(c). The journey fare provision replaced the 'displacement allowance' under ISMA, a change viewed critically by worker advocacy groups who argue that a lump-sum fare payment is less protective than the original displacement allowance.

²⁷⁵OSH Code 2020 (n 1), s 60(2)(a). The portability of PDS benefits was one of the most significant improvements over the ISMA 1979 regime, which made no provision for benefit portability.

²⁷⁶ibid, s 60(2)(b).

²⁷⁷OSH Code 2020 (n 1), s 60(3).

The National Database for Unorganised Workers, developed under the Code on Social Security, 2020, is envisaged as a complementary instrument to enable cross-state tracking and benefit portability.²⁷⁸

4.5 Occupational Safety and Health Protections

The OSH Code 2020 extends its comprehensive occupational safety and health provisions uniformly to all workers, including inter-state migrants, without distinction.²⁷⁹ Employers are required to provide a workplace free from hazards, supply necessary safety equipment, and ensure compliance with prescribed occupational health standards. Free annual health check-ups are mandated for all workers,²⁸⁰ and specific medical examination requirements are prescribed for workers in hazardous processes, mines, docks, and construction sites.²⁸¹ Chapter VI of the Code prescribes welfare facilities – including canteens, first aid boxes, rest rooms, and crèches – that must be provided to workers including migrant labour.

4.6 Grievance Redressal and Enforcement Mechanisms

The Code creates a multi-tier grievance redressal framework accessible to inter-state migrant workers. Workers have the right to obtain safety and health information from their employer, and to report inadequate safety provisions to the Inspector-cum-Facilitator. Workers who get serious personal injury or danger to health may report the matter directly to both the employer and the Inspector-cum-Facilitator, whose determination on the existence of imminent danger is final and binding on the employer.²⁸²

Additionally, the Code mandates the establishment of a toll-free helpline specifically for inter-state migrant workers, enabling them to contact government authorities in case of difficulty.²⁸³ This provision addresses a practical barrier that has historically impeded migrant workers from accessing grievance mechanisms.

V. Constitutional and Judicial Dimensions

5.1 Fundamental Rights and Labour Protections

The constitutional foundations of migrant worker protection in India derive primarily from Articles 14 (equality before law), 19(1)(g) (right to practise any profession or carry on any occupation), 21 (right to life and personal liberty), 23 (prohibition of traffic in human beings and forced labour), and 42 (provisions for just and humane conditions of work). The Supreme Court's expansive interpretation of these provisions over the past four decades has established that statutory labour rights are inseparable from constitutional guarantees.²⁸⁴

5.2 People's Union for Democratic Rights v. Union of India (1982)

The landmark judgment of the Supreme Court in *People's Union for Democratic Rights v. Union of India* remains the most significant constitutional judgement on the rights of migrant and contract workers in India. The case arose from a Public Interest Litigation filed by the People's Union for Democratic Rights (PUDR), which exposed conditions – including non-payment of minimum wages, child labour, and denial of statutory benefits – among workers employed by contractors on construction projects

²⁷⁸Bhatt & Joshi Associates (n 32). The National Database for Unorganised Workers developed under the Code on Social Security, 2020 aims to create a unified registry tracking workers across state boundaries.

²⁷⁹OSH Code 2020 (n 1), Chapter IV (Occupational Safety and Health) and Chapter V (Health, Safety and Working Conditions).

²⁸⁰*Ibid*, s toll.

²⁸¹OSH Code 2020 (n 1), s 23 read with Draft Rules; PRS India (n 26). Free medical examination must be provided for every worker above 45 years of age in factories, docks, mines, and construction work.

²⁸²*Ibid*, ss 26–28 (rights of employees regarding safety information and imminent danger). Workers may raise safety concerns with the Inspector-cum-Facilitator whose determination is final.

²⁸³Sec 63 of Occupational Safety, Health and Working Conditions Code, 2020

²⁸⁴*People's Union for Democratic Rights v Union of India* (1982) 3 SCC 235 (AIR 1982 SC 1473) (Supreme Court of India, 18 September 1982).

for the 1982 Asian Games in Delhi. Workers had been recruited from Bihar, Rajasthan, Uttar Pradesh, and Odisha, and paid below the statutory minimum wage, with 'jamadars' (labour contractors) deducting commissions from the wages already remitted.

A Bench led by Justice P.N. Bhagwati held that it constituted a violation of Article 21 of the Constitution. The Court drew upon the expanded reading of Article 21 developed in *Maneka Gandhi v. Union of India*²⁸⁵ to hold that the right to life encompasses the right to live with basic human dignity, and that deprivation of statutory labour rights by the state violates this right.

The Court further held that non-payment of wages below the statutory minimum constitutes 'forced labour' within the meaning of Article 23, which prohibits all forms of traffic in human beings and begar, and which the Court construed to extend to any situation where a person is compelled to work for less than legally prescribed remuneration.²⁸⁶ The PUDR judgment thus established the principle that violations of labour laws are constitutional wrongs, and that the judiciary is empowered under Article 32 to intervene directly on behalf of workers who cannot effectively access ordinary legal remedies.

VI. Critical Gaps and Implementation Challenges

6.1 Exclusion of Intra-State Migrants

The OSH Code protects only *inter-state* migrant workers. These intra-state migrant workers face the same problems as inter-state workers, such as low wages, poor living conditions, unsafe workplaces, and lack of social security. Despite this, they are not specifically covered under Chapter XI of the Code. This creates a major gap in the law that needs to be fixed in future amendments.

6.2 Raised Applicability Threshold

If the minimum threshold **increases** from five to ten **workers, then** small and medium establishments **will not be** covered under the law. These smaller workplaces are common in the informal sector, where many migrant workers are employed **and** the worst forms of exploitation—such as low wages, poor working conditions, and lack of legal protection often happen in small, unregistered establishments, especially in sectors like construction, domestic work, and small-scale manufacturing. Because of this, raising the threshold reduces the level of protection available to migrant workers compared to the earlier ISMA 1979 law.

6.3 Enforcement Deficit and Institutional Capacity

The Code replaces traditional inspectors with "Inspector-cum-Facilitators," showing a shift from strict enforcement to helping employers comply with the law. This approach may work well for large, responsible employers who already follow regulations. However, it can be less effective for migrant workers employed by contractors or in informal sectors, where employers often do not comply voluntarily. In such cases, weaker enforcement may leave workers unprotected.

Recommendations

On the basis of the foregoing analysis, the following recommendations are advanced:

First, the applicability threshold under Section 59 should be reduced to five or fewer workers to cover the category of small establishments.

Second, the legislature should consider extending the protections in Chapter XI to intra-state migrants, who constitute the majority of India's migrant workforce.

²⁸⁵*Maneka Gandhi v Union of India* (1978) 1 SCC 248; *Francis Coralie Mullin v Administrator, Union Territory of Delhi* (1981) 1 SCC 608. These judgments established that Article 21 encompasses the right to live with basic human dignity.

²⁸⁶*PUDR v UOI* (n 28) [para 12]. The Court further held that non-payment of minimum wages amounts to 'forced labour' within the meaning of Article 23.

Third, both the Central and State governments should focus on completing the National Database for Unorganised Workers and link it with systems like the One Nation One Ration Card and welfare funds for construction workers. This is important to ensure that migrant workers can access benefits even when they move between places.

Conclusion

The Occupational Safety, Health and Working Conditions Code, 2020 marks an important legislative effort to strengthen the legal framework governing inter-state migrant workers in India. While it incorporates several progressive provisions aimed at improving welfare and ensuring benefit portability, its effectiveness is constrained by structural and operational limitations, including restricted coverage, increased applicability thresholds, and a diluted enforcement mechanism. These shortcomings undermine the Code's ability to fully address the vulnerabilities faced by migrant workers, particularly those in the informal sector.

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