



Joint Stakeholder's Report

**FROM SALESIAN SOCIAL FORUM (SSF –INDIA)
TO THE UN OFFICE OF
THE HIGH COMMISSIONER FOR HUMAN RIGHTS**

UPR IV INDIA

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REPORT FROM SALESIAN SOCIAL FORUM (SSF – INDIA) TO THE UN OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS: 2022¹

INDEX

Sl. No.	Theme	Page Nos
	Overview of Situation in India	<u>2</u>
RIGHTS OF MIGRANT AND INFORMAL WORKERS		
1.1	Right to Life	4
1.2	Right to Work	6
1.3	Right to Food	8
1.4	Right to Health	9
1.5	Right to Child Care	10
1.6	Right to form Collectives	12
1.7	Appendices – I,II,III,IV,V & VI	15

OVERVIEW OF THE SITUATION IN INDIA

The period under review (2016-2021) saw the exodus of the migrants to their states of origin, during the Corona Pandemic. As on 10 March, 2022, Bharathiya Janata party has a brute majority in the Parliament and is in power in 18 states. The Congress, other major party has its rule only in two States. Other States are held by coalitions or regional parties that have emerged powerful contenders. The enforcement of the Hindutva ideology claiming only the Hindus have the right to live in India and implementing that through means, legal and nefarious, such as Lynching, Love Jihad, Jai Sri Ram, Beef Politics, Anti-Conversion Bills and Death Politics have been on the political agenda of the BJP, in capturing power. There is no development or progress in the country for “We, the People of India”,² except for those who toe the Hindutva line. Building Ram temple at Ayodhya, erecting a statue of Vallabhai Patel or Sri Ramanuja, Central Vista Avenue and the New Parliament Building are misplaced priorities of an anti-poor government.

Migrants and unorganised workers, trekking back home, 1000s of kilometres away, caught the global attention during the Corona Pandemic in 2020, in turn, evoking the late attention of the media, bureaucracy and judiciary. Though their wretched plight pricked the conscience of the nation, the government remained callous.

India is a signatory to the SDGs 2030. Goal 8 articulates the need for ‘promoting sustained inclusive and sustainable economic growth, and productive employment and decent work for all’. Goal 10 enunciates “Reducing inequality within and among countries,” “leaving no one behind.” But the real situation in the country is pathetic, even after 7 years.

¹This drafting of this report has been facilitated by the SALESIAN SOCIAL FORUM (SSF – INDIA) in collaboration with several organisations and individuals across India, who provided field reports, reviews, oral submissions. Several people’s organisations and platforms supported the online discussions. Given at the end of this Report in Appendices-I is a partial list of organisations and individuals who endorse this report. In Appendices-II is a writ petition© No.916 of 2020, Supreme court judgment for migrants, Appendice - III, IV, V and VI, relevant and contextualized reflections by Aruna Roy and Nikhil Dey, *Tithi Bhattacharya*, *Nissim Mannathukkaren* and *Upendera Baxi*, corroborating our stance in the overview of the period from 2016-2021 are added.

² See “Preamble to the Indian Constitution.”

In pursuing the sustainable Development goals (SDGs), in adopting the New York Declaration for refugees and migrants in 2016, the 193 UN member states recognised the need for comprehensive approach to human mobility and enhanced co-operation. The Global compact for migration is the first ever UN global agreement on a common approach to international migration in all dimensions. This needs to be adopted urgently to interstate and intrastate migrants in India.³

Instead, the Central Government has cut over 20% of the fund allocations proposed for the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) for the second consecutive year, amid the pandemic. The domestic ratings agency said "the reduction...is perplexing, particularly when distress is building-up in rural India."⁴

The Budget 2022 has nothing to promise for the informal and migrant labourers in the situation of Pandemic. On the contrary, Finance Minister Nirmala Sitharaman, has launched the National Monetisation pipeline (NMP), listing out the government's infrastructure assets, worth Rs 6 lakh cr to be sold over the next four years, across rail, road, power sectors.⁵

An assessment of the political, social and economic situation in India after the two years of pandemic has brought to light the gravity of the migrant issues. The poor, unorganised and migrant workers, already struggling for their livelihoods before the pandemic, were the most affected due to the Lockdown.⁶

Internal migration in India accounts for a large population: 309 million⁷, and by more; recent estimates 326 million or 28.5 per cent of the population⁸– as compared to international migration: 11.4 million⁹. 70.7 per cent of internal migrants are women (Census 2001). According to survey carried out by National Statistics Office (NSO) in 2017-2018, there are around 38 crore workers engaged in the unorganized sector. Thus, the number of persons in the unorganized sector is more than 1/4th population of the country.

Migrant workers form, by far, the largest part of India's unorganized work sector. According to the ILO, more than 85% of India's workforce belongs to the informal sector of the economy. According to the 2011 census report, there are 40 million migrant workers in India. The States having the highest percentage of migration are Uttar Pradesh (23%) and in Bihar (13%).

The Constitution of India (Article 19) gives the right to all citizens to "move freely throughout the territory of India; to reside and settle in any part of the territory of India. The irony today is that, on account of the Hindutva agenda, the migrants are treated as outsiders and discriminated against, on the basis of their language, state, culture and religion. Unlike in the past, where the migrants moved mostly, only within the state or to the nearby states for

³ The global compact comprises 23 objectives for better managing migration at local, national, regional and global levels (walking with migrants); the Forced Labour Convention, 1930 (No. 29), Abolition of Forced Labour Convention, 1957 (No. 105), Equal Remuneration Convention, 1951 (No. 100), Discrimination (Employment and Occupation) Convention, 1958 (No. 111), Minimum Age Convention, 1973 (No. 138) and Worst Forms of Child Labour Convention, 1999 (No. 182).

⁴ *Economic Times*, Feb 11,2022.

⁵ Amitabh Kant, *Economic Times*, Feb 11, 2022.

⁶ *The Sentinel* 2020. During the first Lockdown, more than 138 *Shramik* Special trains transported nearly 1,88,000 stranded people to various Northern States.

⁷ Census 2001

⁸ *NSSO 2007-2008*

⁹ *The World Bank* 2011

livelihood, today the migrant labourers move from northern India towards southern India, for jobs and livelihoods. This forced the Supreme court in Writ Petition (C) No.916 of 2020 to order all the states to register, to provide ration and to make jobs available within the state. It also suggested to implement various enactments:

- i) Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979;
- ii) Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996;
- iii) Unorganized Workers' Social Security Act, 2008.

UPR IV on India needs to address the situation of MIGRANTS and all the workers in the unorganised or informal sector who constitute three fourths of the population of India or one fifth of humanity. The gravity of the situation calls for urgent, well-calibrated and closely monitored plan of action in which everyone, especially the internal migrants and the whole population in the unorganised sector participate, lest the very Mandate of the UN being carried out through these Periodic Reviews becomes futile.

RIGHTS OF MIGRANT AND INFORMAL SECTOR WORKERS

1.1 Right to Life

- The preamble, fundamental rights in Part III, and Directive Principles of State Policy under Part IV of the Constitution of India guarantees all rights to all workers.
- Article 16 extends the right to 'equality of opportunity for employment or appointment under the state.
- UNESCO and UNICEF (2013) report, on the "Social Inclusion of Internal Migrants in India", states that a clear and concise governance system needs to be developed to address the issues concerning internal migration in India.
- The Ministry of Labour and Employment did not have any data of migrant workers who lost their jobs and their lives during the COVID-19 lockdown, Minister Santosh Kumar Gangwar on Monday informed the Lok Sabha through written replies to several members' questions,¹⁰
- The Railways Protection force¹¹ confirmed that 80 migrants died onboard while travelling back home on the Shramik Special trains from May 9 to 27.
- Millions of migrant workers were stranded across the country without food and shelter after the nationwide lockdown was announced from March 25, 2020 at 4-hour notice.¹²
- During the first wave of the pandemic, with trains cancelled, and with no work or pay or rations, thousands of migrant workers started walking home. As many as 24 migrants including five children died on the way.¹³

¹⁰ Damini Nath, "Government has no data of migrant workers death, loss of job," *The Hindu*, New Delhi, September 14, 2020. See also Aruna Roy and Nikhil Dey, "A Virus Politicized," *Seminar*, 733 (September, 2020, pp. 42 – 48, here p.44.

¹¹ Prashasti Awasthi, *Hindustan times*, Mumbai May 30.

¹² Economic times. [Indiantimes.com/news/politics](https://www.indiantimes.com/news/politics). See also Saba Naqvi, "Covering the Remains of the Day During Lockdown," *Seminar*, 733 (September, 2020), pp. 66 -71.

¹³ Guruvinder Singh, *Life Gate*, 6 April 2020.

¹⁴ Rickson Oommen, Ernakulam, Dec 26, 2021.

- At Kizhakkambalam, Kerala, recently, a labour issue¹⁴ was used to express vendetta on the migrants. Using the police for this issue was outside the framework of labour law, treating migrant labourers as criminals, ignoring the rights of migrant workers.
- Migrant Construction workers having no proper shelters, toilet or basic amenities, drinking water, sanitation, etc. forced a worker to the railway track resulting in a fatal accident.¹⁵ This is especially true in areas with large concentration of Interstate migrants.¹⁶
- Non-implementation of social protection measures is a matter of grave concern. Only a negligible minority of 5% of the respondents was able to access the benefits of schemes, the government had announced for the welfare of migrant workers.¹⁷
- Legal protection was lacking against the exploitation of contractors, house owners and other xenophobic individuals and groups of people in Kerala.¹⁸ Identification and Registration of Migrant Labour families by appropriate district authority is essential.
- Urban migration is on the increase, with both the foreign capital and Indian corporate companies locating themselves in the big cities, leading to rural pauperisation and de-industrialisation.¹⁹
- Amongst the total workforce, 43.7 crore workers are in the unorganised sector, and are not legally covered by social security benefits. Unlike many governments worldwide, India spends far too little on the social protection of its workers. The Budget 2022 saw only decrease in allocations for health, food security, pensions, employment, insurance and MNREGA.²⁰
- Indian Social Security Legislations and ILO Convention 102 of 1952 mandate following nine indicators for comprehensive Social Security Benefits.²¹ Out of these, 8 indicators are covered in ESIC, and 3 Indicators are covered in EPFO and Employees Compensation Act. Currently, these benefits are enjoyed by only by 2% of the employed workforce, mostly from the organised sector. The unorganised and migrants are practically excluded from social protection benefits.²²
- According to a Government of Tamil Nadu survey conducted in 2014, there are 10.67 lakh interstate migrant workers in Tamil Nadu, about 11 percent (1,17,370) of whom are construction workers. Registered construction workers receive benefits including pensions, maternity, compensation in the event of an accident or death, educational scholarships and skills training, from one of 36 welfare

¹⁴ Rickson Oommen, Ernakulam, Dec 26, 2021.

¹⁵ FIR no.Cr.No.21/22, u.s.174 Crpc.

¹⁶ Survey onf ISM in Tamil Nadu, ISI Bangalaoe and LISSTAR, 2016.

¹⁷ Report on the study on social protection available to ISM and social integration in Kerala 2017.

¹⁸ Report on the study on social protection available to ISM and social integration in Kerala 2017.

¹⁹ Draft Action Plan for Rehabilitation of Children of Migrant labour, 27thjanuary 2010, Tamil Nadu labour department.

²⁰ Prof. Babu Mathew, Director, Centre for Labour Studies and livelihood, National law school, Bangalore; See also Adnan Naseemulla, "Small Business and India's Elitist Political Economy," *Seminar*, 734 (September, 2020), pp. 28-32, for a historical analysis of the plight of informal sector, which is the backbone of India's economy, during the Pandemic, following the long-term dissonance between the elite bureaucratic and small entrepreneurial actors in the Indian economy.

²¹ 1. Medical Benefit, 2. Sickness Benefit, 3. Unemployment Benefit, 4. Old age Benefit, 5. Employment Injury, 6. Family Benefit, 7. Maternity Benefit, 8. Invalidity Benefit, and 9. Survivor's benefits.

²² Prof Babu Mathew, Director, Centre for Labour Studies and livelihood, National law school, Bangalore

boards set up under Tamil Nadu Manual Workers Act 1982 in Tamil Nadu, for informal workers in various sectors. These benefits and Welfare Boards could be extended to the whole country.

- We have been informed that under the Cess Act, more than Rs. 37,400 crores have been collected for the benefit of construction workers, but only about Rs. 9500 crores have been utilized for their benefit. Where did the remaining Rs. 28,000 crores go? Supreme Court observed in 2017 that the Comptroller and Auditor General (CAG) was not able to trace Rs 20,000 crore collected under the Building and Other Construction Workers' Cess Act, 1996, meant for spending on construction workers' welfare.

Recommendations

- Accomplishment of SDG 1: No Poverty should lead to SDG 2: No Hunger, SDG 3: Good Health and SDG 6: Clean Water and Sanitation for the migrants.
- District Facilitation Centre for Migrants to be opened in all migrant-prone and recipient Districts by the Labour Department.²³
- Ensuring Registration of migrant workers, like in the Construction Industry and guaranteeing essential amenities and equal social protection as locals.
- Setting up a toll-free helpline exclusively for migrant worker households for attending in their language to their emergency and distress related problems.
- Reversing urban migration by reviving rural economy, initiating agro-based industries using the resources available or produced locally.

1.2 Right to Work

- Article 16 extends a right to 'equality of opportunity for employment or appointment under the state.
- Article 43 says workers should have the right to a living wage and "conditions of work ensuring a decent standard of life"
- India is a founding member of the International Labour Organisation, India has ratified six out of the eight core/fundamental ILO conventions²⁴
- Kerala government will soon provide identity cards, with the details of the contractor, for all migrant labourers in the State, to ensure safety of both locals and migrants.²⁵
- The ISMWs, as also many contractors, are not aware of the benefits available. The principal employer and the enforcement agency do not monitor or ensure registration. Left to their whims, the contractors continue illegal human trafficking, evade implementation of "INTER-STATE MIGRANT WORKMEN [REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE] ACT, 1979.
- As Labour Laws were not implemented in construction and manufacturing units employing ISMs, they lose their eligibility for ESI, EPF, overtime payments, weekly off and monthly leaves.²⁶

²³ "Status Paper on Migrants"

²⁴ Joydip, "Has International labour organisations (ILO) lost its relevance?," *Legal service India*, E-journal.

²⁵ <https://www.thehindu.com/news/national/kerala/identity-cards-for-migrant-labourers/article3364524.ece#!>

²⁶ Survey of ISM in Tamil Nadu, ISI Bangalaoe and LISSTAR, 2016

- There is yet no separate Act from the centre or state government for protecting the rights of domestic workers as per International convention on Domestic workers C.189.
- When migrants who returned during the pandemic found no work back home. Demand for work under MGNREGA increased and more funds should have been allocated. Instead, the government decreased the allocation even as much as 20% including in Budget 2022.²⁷

Recommendations

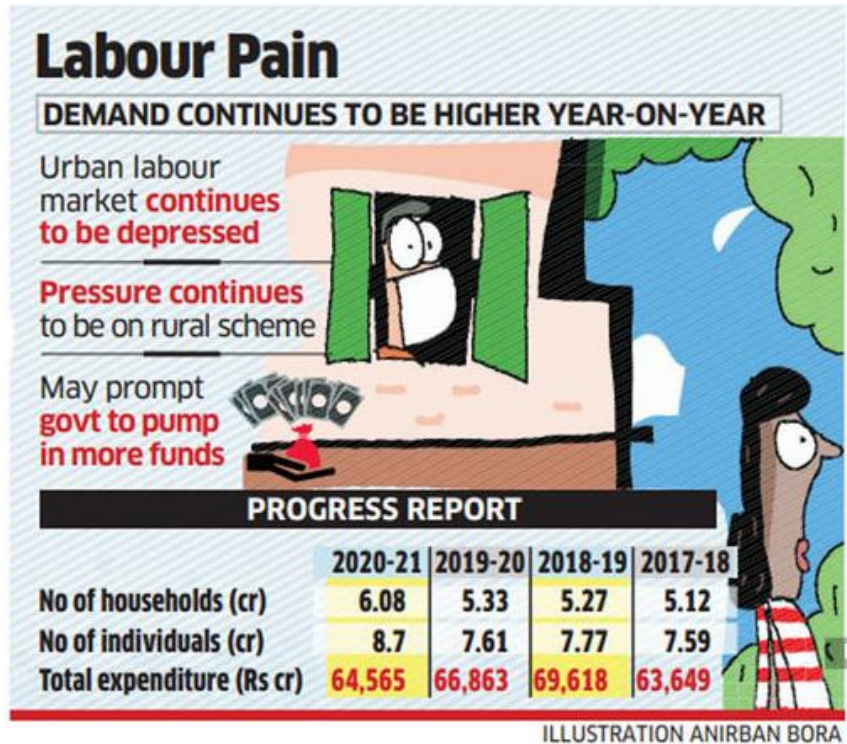
- Accomplishment of SDG 1: No Poverty can lead to SDG 8: Good Jobs and Economic Growth for the migrants.
- India is still to ratify the UN Convention on the Protection of the Rights of all Migrant Workers and the members of their Family – 1990 and ILO conventions 97, 143, 181 and 189.
- The Inter-state migrant workmen (regulation and employment and conditions of service) Act, 1979 has to be revamped, bringing in a comprehensive, new central act to safeguard the inter-state migrant rights at the destination and the source, to protect their rights, welfare and health.²⁸
- 300 days of MNREGA jobs to be provided at the source to stop distress migration from rural India.²⁹
- The ILO initiated MoU between the sending and receiving states under 'Decent Work Country Programme' to be implemented.
- An Inter-State Government Migration Coordination Cell between the host and source states should be facilitated by the Central Government to monitor, regulate and facilitate safe and protected migration³⁰

²⁷ Table – 1 “Demand for work MGNREGA beneficiaries surpass last years,” Economic times.indiatimes.com/news/.

²⁸ ISI Bangalaoire and LISSTAR, “Survey of ISM in Tamil Nadu,” 2016.

²⁹ ISI Bangalaoire and LISSTAR, “Survey of ISM in Tamil Nadu,” 2016.

³⁰ Report on the study on social protection available to ISM and social integration in Kerala, 2017.



1.3 Right to

Food

- Article 21 of the Constitution may be interpreted to include the right to live with human dignity, which includes the right to food and other basic necessities.³¹
- The Supreme Court, referred to the National Statistics Office (NSO) data of 2017-2018 and ordered that the around 38 crore workers engaged in the unorganized sector be provide food security by the government.³²
- NFSAct,2013 has special provisions for pregnant women, lactating mothers and children upto14 years, to receive nutritious meal (ICDS), Mid-day meal (MDM), Rs.6000/- maternity benefit, through Integrated Child Development Services (ICDS) centres, called Anganwadis.³³
- ISM migrants are not provided with PDS ration at the destination States. It is widely acknowledged that drivers and impacts of migration are intimately linked to the root causes of food insecurity and malnutrition, rural poverty, inequality, conflicts and climate change.³⁴
- 81.2% of construction workers and 73.8% of daily labourers had Public Distribution (PDS) cards such as APL card, BPL card, Antyodaya or Annapurna cards. But there are questions as to how many were able to use these cards to get ration food items in the place of migration.³⁵

³¹ Business standard, Newsletter, Right to life may be interpreted to include right to Food: Supreme court, PTI, New Delhi, June 30,2021

³² Business standard, Newsletter, Right to life may be interpreted to include right to Food: Supreme court, PTI, New Delhi, June 30,2021

³³ National Food Security Act, 2013, Government of India, Department of Food and Public Distribution, Ministry of Consumer Affairs, Food and Public distribution, March 11,2022.

³⁴ National Food Security Act, 2013, Government of India, Department of Food and Public Distribution, Ministry of Consumer Affairs, Food and Public distribution, March 11,2022.

³⁵ Into the life of young migrants, A study of young migrant workers in eight cities of India, Don Bosco National forum for the young at risk, March 2020.

- The Supreme court instructed the government³⁶ to ensure that no Migrant goes hungry. This can be achieved if the source and destination states have convergence of strategies such as ensuring the coverage of migrant's rights and entitlement under National Food Security Act Scheme or ration cards are mutually respected..
- Many migrant households do not have real access to a PDS facility, or to rural employment guarantee opportunities in the source states. These deficiencies that cause distress migration which must be set right alternate income opportunities.³⁷
- 'One Nation, One Ration Card' is based on Aadhar and digitalisation of ration cards. It is feared that both Aadhar and digital ration card may exclude either a person who migrates alone, or migrates with his family or the left-behind vulnerable family member who stays back in the village. It should create inclusion in food schemes, both, at source and destination, without negating the very spirit of ensuring household food security of the migrant family.³⁸

Recommendations

- **SDG 1: No Poverty to match SDG 2: No hunger for migrants.**
 - Address the adverse and structural drivers of migration, including poverty, food insecurity, malnutrition, climate change and environmental degradation, gender inequality, preventing the need for distress migration..³⁹
- Make ration cards universally valid so that they could be binding anywhere in the country and non-compliance be made an offence under the law.

1.4 Right to Health

- Occupational Safety and Health (OSH), an existential human and labour right, has not been addressed by law-makers and trade unions.
- Compromising on safety can lead even to extreme consequences, beyond factory limits, was the case of Bhopal gas tragedy, a national level crisis.
- Workers with lower salary and lower education, suffer far more on receiving any injury. As many as 92% of those injured were migrants, 81% educated only up to grade 10 and 71% earned less than Rs 10,000/- a month, with no overtime pay for many despite a 12-hour shift. In the SII report, Ashok Kumar, Delhi, asks why the Constitution guaranteed right to safe environment at work-place is not applied to these poor migrants?⁴⁰ He questions also why they have no ESI coverage, why they have not received their ESIC e-Pension Card on the day of joining their jobs, as the ESIC regulations require. Interestingly, all these injured workers did receive their Card a few days after the accident.⁴¹
- According to Director General of Factory Advice Service and Labour Institute, 2019, the sanctioned inspector working post for India was only 70.60%; only one inspector for every 487 registered factories (1 for every 25,415 workers). How to ensure safe work place in the absence of strong monitoring or inspection? India has ratified International Labour Organization (ILO) conventions, Labour Statistics Convention, 1985 (C160). Compromising on comprehensive data, India

³⁶ Krishna Dass Raja Gopal, Hindu.

³⁷ Report on the study on social protection available to ISM and social integration in Kerala 2017.

³⁸ Umi Daniel, One nation. One Ration card, the hurdles ahead, Down to Earth, Friday 12, July,2019.

³⁹ United Nations on migration – towards sustainable food systems, the critical role of migrants, Sept 2021.

⁴⁰ SII Report – Ashok Kumar Delhi.

⁴¹ SII Report – Ashok Kumar Delhi.

violates these conventions⁴² and show a dipping graph in occupational safety, K.R. Shyamsundar, Hindu, 14 February 2022.

- During 2011-2016, number of cases of occupational diseases reported to Govt of India was only 562. In contrast a scientific article published in the National Model Journal of India, 2016 indicates prevalence of occupational diseases such as Silicosis and byssinosis. India has ratified International Labour Organization (ILO) conventions, the Labour Inspection Convention, 1947 (C081). Compromising on Inspection, India violates these conventions.⁴³
- About 88% of the construction workers and daily labourers do not have the government supported health insurance, the Rashtriya Swasthya Bima Yojana (RSBY) cards for BPL persons and employer supported health insurance. Their inability to access free treatment in government hospitals in the absence other ID cards, will make their sustenance very difficult during illness.⁴⁴
- In addition, migrant workers are more likely to experience injuries in the workplace than local citizens; they are also less aware about occupational injury and remedies.⁴⁵
- Building and Other construction workers Act (BoCW Act) has safety standards of the construction site.⁴⁶ All of these are removed from the upcoming Central labour codes. Migrant workers working in construction sites are not provided with appropriate safety gears, PPEs, etc. and face accidents, become disabled or exposed to occupational diseases or hazards such as silicosis, or even death.
- Provision for Mobile health clinics to cater to the health needs of migrant worker sites, care of their children, especially of in the construction sector and in remote work sites.⁴⁷

Recommendations

- SDG 1: No Poverty to match SDG 3: Good Health for all migrants also.
- The Labour codes especially the Occupational safety Health code, the information and the labour statistical system need to be reviewed as government is in the process of framing the vision @2047 for labour ministry.
- The labour codes and Policies should stand careful scrutiny by experienced parliamentarians, aided by fresh inputs from employees, employers and experts.

⁴² K.R. Shyamsundar, "Dipping Graph in Occupational Safety," *The Hindu*, 14 February 2022.

⁴³ K.R. Shyamsundar, "Dipping graph in occupational safety," *The Hindu*, 14 February 2022.

⁴⁴ Into the life of young migrants.

⁴⁵ Migrant work and employment in the construction sector, International labour office, Geneva.

⁴⁶ BoCW Act.

⁴⁷ TN GO.150, Labour commissioner ltr no. W1/36148/14, Dated 22.08.20214.

1.5 Right to Child Care

- Conventions on the rights of the child, International convention on the protection of the rights of all migrant workers and members of their families are applicable to India.
- As per Census 2011, 10.13 million Indian children aged 5-14 years (3.9% of total in this age group) are working. Every 11th child is working in the age group of 5 – 18 years, 1 in 5 children in the 15 – 18 years age group are working.⁴⁸ A study by Save the Children reports that the need for higher income in the family forces them to opt for child labour. 57% of these children are willing to study. But they cannot afford school fees (70%) and o poor family financial constraints (31%) were the key barriers to reconnect with studies.⁴⁹ UNCRC No. 18 wants governments to compensate families for stopping child labour.
- Global estimates indicate a rise in child labour 160 million worldwide – an increase of 8.4 million children in the last four years. 63 million girls and 97 million boys were in child labour at the beginning of 2020, or almost 1 in 10 of all children.⁵⁰
- Lack of child care and education of children in Labour camps and Work sites leads to child labour and exposure of children to unsafe site conditions.
- Adequate Anganwadi / Creche facilities Pre-Primary education, schooling for Children, in the age group 5 to14 years, are not available in the work places.⁵¹
- An all India data portal can check and include the migrant children in other states also. INTER STATE COMMITTEE ON CHILDREN OF MIGRANT LABOUR can facilitate the convergence between states for sharing data, information and expertise the tracking and rehabilitation of migrant children.
- India ratified the United Nations Convention on the Rights of the Children in 1992. The Campaign Against Child Labour show the states of Bihar, Uttar Pradesh, Rajasthan, Madhya Pradesh and Maharashtra have the highest number of child labourers, over 1.26 crore. Tens of thousands of children work 14-16 hours a day, with scant access to water and nutrition, especially in 5 sectors: 1. Garments Industry, 2. Brick kilns, 3. Unorganised business such as tea shops, dhabas, small shops, servants and errand boys, 4. Agriculture, and 5. Fireworks.⁵²

Recommendations

- **SDG 1: No poverty to match SDG 4: Quality Education to all migrant children and ZERO child labour from among them.**
- **Schooling for Children must be in their mother tongue. SSA could coordinate with their counter parts in other States for Teachers and Learning materials. Source states to contribute educational volunteers, teachers and learning material to destination states.**
- **Hostel facilities for the children of seasonal and short-term migrant labour in their home & destination districts / states, besides Social Welfare / Adi Dravida / Backward Class Hostels.**

⁴⁸ CRY analysis, Census 2011.

⁴⁹ ‘Status of Child Labour ad Legal Entitlements of Workers in Major Sectors in Rajasthan’ in six districts of Rajasthan from January to April, 2021. Save the children, Rajasthan.

⁵⁰ Child labour Estimates 2020, trends and the road forward, UNICEF /ILO joint publication, June 2021.

⁵¹ TN Draft action plan for rehabilitation of children of migrant labour, 2010.

⁵² Five sectors where child labour can be found majorly in India, Save the children, 14th Sept 2016.

1.6 Right to form Collectives

- India is a party to the International Covenant on Civil and Political Rights (ICCPR), Indian constitution ensures right to protest as a fundamental right. Art.11 –right to protest by holding meeting and demonstration with other people; Art.19 (1)(a)- states that all citizens shall have the right to freedom of speech and expression, and Art.19(1)(b)- states that all citizens shall have the right to assemble peaceably and without arms.
- Trade Union Act, 1926 ensures workers’ Right to form and be part of trade unions.
- India has not yet ratified the core/fundamental convention namely freedom of association and protection of the rights to organize convention, 1948(No.87) and Right to organize and collective bargaining convention, 1947 (No.98)
- The Industrial Disputes Act of 1947 requires any establishment employing over 100 workers to seek government permission before any retrenchment; the threshold has been raised to 300, in the Industrial relations code. The Industrial Employment (Standing Orders) Act of 1946 requires employers to formally define conditions of employment under them if they have at least 100 workers; 2020 Code has increased the number to 300 workers.⁵³
- According to the Factories Act, there should be grievance redressal committee for factories with 20 or more workers. However, audits conducted by Fair Wear Foundation between 2012 and 2015 found that there was no functional grievance mechanism available in 79% of factories in North India and 64% in south India. Where the committees did exist, they were employer-dominated, in spite of being composed of both workers and employers. Discussions on the larger issues of wages, overtime and sexual harassment were not happening.⁵⁴
- The Labour codes are “anti-worker” for allowing employers to hire and fire workers more easily. Without safeguards for workers, it will be harder for workers to negotiate better terms and wages with employers, and makes strike actions more difficult. Industrial relations code, “attacks collective bargaining by making trade union leaders vulnerable to punishments and attacks existing labour legislations we have for worker protection. “says AITUC General secretary, Amarjeet Kaur,⁵⁵
- On Dec. 20, people blocked highways after about 250 women working at the iPhone factory fell sick and 159 were hospitalised. The company’s silence amplified people’s anger. Even after the workers fell sick, Foxconn or its contractors didn't inform anyone, families or officials. Local activists and lawyers said it was the absence of a union that left Foxconn workers vulnerable to exploitation. Collective bargaining would help workers get fair wages.⁵⁶ ILO fundamental conventions C.87 & C.98 were violated.
- Different Indian trade unions swiftly responded to a worksite accident that tragically killed two young women Pramila Chandi (18) and Madanabati Chandi (22), migrant workers from Kalahandi District, Odisha, at a brick kiln in the Tamil Nadu on 3 June. They died on the spot while unloading bricks from a truck at the M/S K.N.R Bricks (brick kiln), Tiruvallur District where there are around 500 brick kilns with an

⁵³ *Wire*, “Why workers and Opposition parties protesting 3 new labour laws, “Sept 23,2020.

⁵⁴ International Labour Organization (ILO), “Working conditions of Garment workers in India, Fundamental Principles and Rights at Work Branch (FUNDAMENTALS), 2017.

⁵⁵ Shreehari Paliath, “Why Trade Unions are opposing Labour law reforms,” *India Spend*, 7 January 2020.

⁵⁶ *The Quint*, As Foxconn Reopens Tamil Nadu Factory, Women say they don’t want to return, Smitha TK, 14 January 2022.

estimated 40,000 migrant workers.⁵⁷ Many migrant labourers are buried in the brick kilns. No one can raise their voice even for death. Who can rescue for bargain for them?

- Migrant workers are easily exposed to violence, abuse and exploitation, at a higher risk of accidents, even when performing the same job as ordinary workers. They were found to have higher job-related illnesses, injuries and deaths than non-migrant workers. Ronda (2012) analyzed migrant workers in 31 European countries, and found that they had more harmful job exposures compared with local workers.⁵⁸ Casualisation of work has created a large informal work force with little access to or scope for collective bargaining.
- Families of six workers who worked in a shoe factory in Delhi's Udyog Vihar, had to wait two days in front of the factory for the charred remains of victims of an industrial fire in the factory. According to reports by Industrial Global Union, between 2014 and 2017, Delhi recorded 1,529 industrial accidents, the highest in the country. The OSH code applies only to establishments that have more than 10 workers if they have an official power connection, and more than 20 workers if they don't. According to the Economic Census of 2016, industrial units employing 10 or more workers account for only 1.66% of the total such units in the non-agricultural sector, which in effect excludes a majority of establishments from the code's coverage.⁵⁹
- The three Labour Codes were passed in a hurry by the ruling party alliance without any social or political dialogue. No meaningful debate in the parliament, not holding proper consultation with trade unions before drafting them.⁶⁰ It is violative of the international labour standards of ILO that India had committed to.

Recommendations

- Important goal of any labour policy should be to facilitate collectivisation and organisation of migrant workers, with gender and caste inclusivity, across different sectors, wherein they are recruited and engaged.
- Only Social Dialogue with the employers, employees and Government will enable 1. Negotiations and consultation between different actors. 2. Collective bargaining 3. Dispute prevention and Conflict resolution.
- Migrant-dense Market Industries like Garments, Domestic work, Construction, Brick kilns, Mining and Manufacturing, on account of constant movement as well as their invincibility need to form collectives. NCEUS – suggests by allowing any union to register itself as long as it has 7 or more members and to be recognised for all dispute resolution mechanism.⁶¹
- ILO model 'Trade Union Agreement on Migrant workers' Rights' in the context of international migration should be adopted by the Government of India for inter-state migrants.⁶²

⁵⁷ BWI, Building and Wood Works International, "Indian Union ensure justice to killed Brick Kiln Works,"2020.

⁵⁸ Analysing the Risk of safety accidents. The relative risk of migrant workers in construction industry, 6 July 2020- Sustainability.

⁵⁹ Citizen matters, Industrial accidents common as Delhi factory owners brazenly ignore worker safety rules, Dec 1,2021.

⁶⁰ Dr.K.R.Shyam Sundar, Labour law reforms: After a tearing hurry, Adhocism, Lethargy & complexities Dominate Processes of Making Regulation-Part I, The Leaflet, June 11,2021.

⁶¹ Road map for Developing a policy frame work for the inclusion of internal migrant workers in India, Srivatsav, ILO, Dec, 2020.

⁶²ILO, Model, Trade Union Agreement on Migrant workers' Rights, 8 Dec 2008.

- Right to form Assembly is an acknowledgement of SDG 10: Reduced Inequalities for migrants. Its denial will increase inequalities and the rich-poor divide to dangerous levels. Promotion of EQUALITY, can lead to the realisation of SDG 16: Peace and Justice, and the ultimate GOAL, SDG 17: Partnerships for the Goals. The employer and the employed should become partners in development of all, Vision of SOCIAL CHANGE and an EGALITARIAN SOCIETY envisioned by the SDGs, UN declarations and Conventions.