

Analyzing Legal Frameworks and Challenges in Protecting Human Rights of Interstate Migrant Workers in Kerala

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ABSTRACT

The plight of migrant workers in Kerala remains unaddressed, mainly within the state's social and cultural discourse. Despite their significant presence in Kerala's workforce since the 1960s, it was only in the 1990s that they emerged as the predominant labour force. The demographic landscape shifted notably according to the 2011 census, with a substantial influx of migrant workers from states such as Assam, Bihar, Bengal, and Orissa. This paper endeavours to probe several critical questions regarding the protection and welfare of migrant workers in Kerala. It seeks to ascertain whether these workers receive the safeguards mandated by the Inter-State Migrant Workmen Act of 1979. Additionally, it evaluates the extent of their participation in schemes like the Awas Insurance and Migrant Welfare Scheme (2017) and the Migrant Welfare Scheme (2010) initiated by the Kerala Government. Moreover, the paper aims to assess the enrollment rates in initiatives like the Apna Ghar Residence Project (2019). It also delves into whether migrant workers, despite being Indian citizens, are enjoying the full spectrum of rights afforded by their citizenship. Furthermore, it scrutinizes whether there exists a xenophobic

undercurrent in the social and cultural realms of Kerala that impedes the integration and welfare of migrant workers. Ultimately, the objective of this paper is twofold: to conduct thorough investigations into potential human rights violations against migrant workers and to present actionable policy recommendations to the Kerala government aimed at identifying and preventing such violations.

Article Methodology

This article was authored with support from the Science and Engineering Research Board (SERB) Project (CRG/2021/004314) focusing on "Effect of Social and Institutional and Technological Interventions on Access to Healthcare Among Interstate Migrant Labourers in Kerala". It draws upon primary data obtained from both SERB's RTI responses and government sources available online. The study, conducted using qualitative research methods, spans from August 2023 to October 2023, covering Perumbavoor in Ernakulam district and Payippad in Kottayam district. The research includes in-depth interviews and focus group discussions with migrant workers, as well as interviews with stakeholders such as representatives from social government institutions, police officers, human rights activists, NGO representatives, trade union members, and policymakers in academia.

Utilizing primary information gathered through RTI requests, the paper proposes policy recommendations to establish migration policy standards. These recommendations draw upon various international and national legal frameworks, including the Universal Declaration of Human Rights, International Human Rights Law, the report of the Human Rights Council's Thirty-Sixth Session (A/HRC/36/42), the International Labor Organization's Migration Convention, the Global Compact of Migration (GSM) for Safe, Orderly and Regular Migration, as well as relevant articles from the Indian Constitution (Articles 23, 39, 42, and 43). The policy suggestions aim to address the social, cultural, and working conditions of migrant workers in Kerala, grounded in principles of human rights.

Migration Meaning and Definition

Migration refers to the dynamic process of individuals or groups relocating from one geographical area to another, whether within a nation's borders or across international frontiers, to alter their residency status temporarily or permanently. This phenomenon is driven by many factors, commonly called push

and pull factors. Push factors compel people to leave their place of origin due to economic instability, lack of opportunities, or adverse living conditions, while pull factors attract them towards destinations offering better wages, job prospects, and overall living standards.

A comprehensive analysis reveals a multifaceted landscape in the context of Kerala's migration patterns. Dating back to the 1960s, migrants from other Indian states began flocking to Kerala for diverse reasons. Beyond the conventional push-pull paradigm, the labour market condition theory emerges as a significant framework shaping interstate migration dynamics within Kerala. This theory posits that variations in labour market conditions, such as demand for specific skills or industries, influence migration patterns considerably.

A pivotal shift in Kerala's migration landscape occurred around the turn of the millennium, a trend corroborated by the 2011 census data. Before 1990, migrants primarily originated from Tamil Nadu, Andhra Pradesh, and Karnataka. However, post-2000, a notable influx of individuals from states like West Bengal, Assam, Bihar, and Orissa reshaped Kerala's demographic fabric. This transition underscores the dynamic interplay between economic opportunities and demographic movements.

The migration narrative in Kerala encompasses two distinct categories. The first category aligns with the labour market condition theory, wherein individuals migrate in response to demand-supply dynamics within specific sectors or occupations. Conversely, the push-pull theoretical framework encapsulates the motivations of the second category, comprising individuals seeking improved economic prospects, security, or a higher quality of life.

Defined by organizations such as the International Organization for Migration (IOM), the World Bank, and the International Labour Organization (ILO), migration encapsulates individuals or groups' voluntary or involuntary movement driven by a quest for better opportunities, security or an enhanced standard of living. This comprehensive understanding underscores the complex interplay of socioeconomic factors underlying the global phenomenon of migration.

Evert Lee, a prominent figure in migration studies, introduced the concept of "cumulative causation" in the 1960s. According to Lee's theory, migration is not merely a response to immediate push and pull factors but a self-perpetuating process influenced by network effects and feedback loops. As individuals

migrate to a particular destination, they establish social networks and economic connections that further attract migrants, creating a cycle of continued migration.

Moreover, Ravenstein's Laws of Migration, formulated by British demographer Ernest George Ravenstein in the late 19th century, offer valuable insights into the patterns and principles governing migratory movements. Ravenstein's laws highlight critical tendencies observed in migration, including the principles of distance, direction, and volume. These laws elucidate factors such as the propensity for migration over shorter distances, the tendency to occur in multiple steps, and the predominance of migration streams between urban areas.

Additionally, Douglas Massey's "segmented labour markets" theory provides a framework for understanding how disparities in labour market opportunities shape migration patterns. Massey argues that migrants are drawn to regions or sectors characterized by a demand for low-wage labour, often driven by factors such as globalization, technological change, and labour market segmentation. This theory underscores the role of economic forces in shaping migration patterns and the perpetuation of inequalities within destination areas.

Migration Patterns in Kerala

Based on the 2011 census report, we can examine migration patterns in Kerala. The census data reveals a significant surge in migrants, which skyrocketed from 9.2 million to 18 million between 2001 and 2011. It also sheds light on the rising proportions of male and female migrants in the state. Specifically, male migrants surged from 3.4 million to 7.3 million, while female migrants increased from 5.8 million to 10.5 million during the same period. Kerala stands out as the foremost destination for interstate migrants in India, with a remarkable 94.5% of total interstate migrants belonging to the state in 2001. However, this landscape shifted post-2011, with states like West Bengal, Assam, Odisha, and Bihar emerging as new migrant-producing regions, collectively contributing to 20% of Kerala's migrant populace.

Employment emerges as the primary impetus for migration, driven by abundant job prospects and economic stability in Kerala. The influx of internal migrants within Kerala rose from 450,000 to 650,000 post-2001. Despite this, the overall proportion of migrants in the workforce witnessed a decline between 1999-2000 and 2007-2008. Initially, migrants found employment in sectors like construction,

manufacturing, and low-wage private services such as hospitality and retail, prevalent across Kerala's districts. Notably, the construction sector alone engaged approximately 2.3 million individuals in 2017-18. Furthermore, the prevalence of lower wages incentivized employers to favour migrant workers over natives.

States like West Bengal, Assam, Bihar, Uttar Pradesh, Odisha, and Jharkhand are significant sources of low-skilled labour migrants to Kerala. West Bengal contributes around 1.3 million migrants, Assam has 980,000 migrants, and Uttar Pradesh has 410,000 migrants. This data underscores Kerala's comparative advantage in economic well-being vis-à-vis these sending states.

The district-wise concentration of migrant workers in Kerala

Kerala currently hosts approximately 3.14 million migrant workers, with a significant concentration of around 630,000 found in the Ernakulam district alone, making it the primary destination for migrant labour. Following closely, Thiruvananthapuram emerges as the second central hub for interstate migrant workers in Kerala, trailed by Kozhikode. Kannur and Kottayam hold the fourth position, each accommodating approximately 200,000 migrants.

Of these migrants, approximately 1 million are settled in Kerala on a long-term basis. According to the 2011 census and NSS data from 2007-08, around 600,000 to 700,000 migrants from other states reside in Kerala. Among them, 5% or around 52,000 migrants live with their families in the state, constituting roughly 14.5 thousand migrant families, predominantly located in Ernakulam district. Following suit, Thrissur ranks second, hosting around 7,000 migrant families, with Alappuzha securing third place.

Migration policies in Kerala

Kerala stands out as a pioneer among Indian states in safeguarding the welfare of various vulnerable segments of society. The state government has formulated migration-friendly policies aimed at ensuring the security and legal protection of migrant labourers, alongside fostering their developmental needs.

The Interstate Migrant Workers Welfare Scheme of 2010 and establishing a dedicated fund under the Kerala Building and Other Construction Workers' Welfare Boards exemplify the state's commitment to migrant workers' well-being. Eligible workers aged 18 to 60 can avail themselves of this scheme one

month after entering the state by paying an annual fee of Rs. 30 for application renewal. The scheme mandates the registration of all state migrant workers and their employers, offering various benefits to beneficiaries.

Under this scheme, beneficiaries receive compensation for the death of a worker (Rs. 2 lakh for registered workers and Rs. 25,000 for non-registered workers), relief benefits, treatment benefits, body repatriation assistance (up to Rs. 50,000), education scholarships (ranging from Rs. 1,000 to Rs. 3,000 annually), and maternity benefits (Rs. 15,000 for maternity-related expenses).

The Apna Ghar Housing Scheme, initiated in 2019, aims to provide affordable rented housing to migrant workers in Kerala. These houses feature dormitory-style accommodations with kitchen and dining facilities, clean toilets, and convenient access to amenities like hotels. The worker's employer covers the rent, with each migrant receiving Rs. 1,000 monthly. This scheme, which began in Palakkad district, has significantly improved living conditions for migrant workers, reducing the prevalence of inadequate housing.

The Awas Insurance Scheme, introduced in 2017, offers health insurance and accidental death coverage to interstate migrant workers within Kerala. The scheme targets approximately 500,000 migrant workers and facilitates registration through district labour officers. Upon registration, workers receive a smart card containing their personal details and biometric information. This scheme addresses critical health concerns among migrant workers, providing them with access to medical treatment and financial support in case of accidents or illnesses.

Education initiatives play a crucial role in empowering migrant workers in Kerala. Projects like the Changathi Project focus on teaching Malayalam and Hindi literacy to migrant workers, while the Roshni Project provides educational and nutritional support to the children of migrant workers. Additionally, schemes like Mobile Crush offer accessible play school facilities to children under five, promoting early childhood education and development. These efforts underscore Kerala's commitment to improving the educational outcomes and well-being of migrant workers and their families.

Legal Framework

Articles 1 and 2 of the Universal Declaration of Human Rights emphasize all individuals' inherent dignity and entitlements globally. Discrimination based on caste, religion, gender, etc., is prohibited.

The interstate migrant workers of Kerala also merit the protections outlined in the UDHR, as articulated below:

Article 1: All humans are born free and equal in dignity and rights. They possess reason and conscience and should foster a spirit of brotherhood towards one another.

Article 2: Every individual is entitled to the rights and freedoms detailed in this declaration without discrimination based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or any other status. Additionally, no distinction shall be made based on the political, jurisdictional, or international status of the country or territory to which a person belongs, whether independent, under trusteeship, non-self-governing, or subject to any other limitation of sovereignty.

International human rights law obligation

International human rights law encompasses various responsibilities imposed on states to safeguard and uphold human rights within their jurisdiction. These obligations have developed through various international agreements, treaties, and statements. The duty to protect entails that states must implement measures to prevent human rights abuses, which includes enforcing legislation and offering training to ensure proper law enforcement by officials. In the realm of migration, these responsibilities extend to preventing discrimination, violence, and exploitation of migrants. As outlined in this declaration, it is the responsibility of state governments to guarantee the protection of human rights for migrants and to facilitate their access to essential services.

The report from the 36th session of the Human Rights Council convened in September 2023, focused on the plight of interstate migrants in Kerala, India. It highlighted various difficulties faced by these migrants, which encompass:

- **Discrimination:** Interstate migrants encounter discrimination in accessing employment, housing, and education opportunities.
- **Exploitation:** Many migrants are subject to exploitation by employers, often receiving low wages or being coerced into hazardous work environments.
- **Violence:** The report underscored the vulnerability of interstate migrants to violence emanating from employers, landlords, and other community members.

In response to these challenges, the report proposed several recommendations directed towards both the Government of India and the Government of Kerala:

- Implementation of anti-discrimination legislation: The report urged the enactment and vigorous enforcement of laws safeguarding interstate migrants from discriminatory practices in various spheres like employment, housing, and education.
- Safeguarding against exploitation: Establishing minimum wage standards and enhancing labour inspections were advised to shield migrants from exploitation.
- Provision of essential services: The Government of Kerala was advised to ensure that interstate migrants have access to vital services such as healthcare, education, and housing.
- Addressing violence: Steps to combat violence against interstate migrants, including awareness campaigns and victim support services, were recommended.

Furthermore, the report stressed the pivotal role of civil society organizations in addressing the challenges interstate migrants face. It encouraged these organizations to persist in advocating for the rights of migrants and supporting them.

With its century-long commitment, the International Labour Organization (ILO) prioritizes the equitable treatment of all workers, regardless of their origin. Central to its mission are several critical initiatives concerning migration:

- Ensuring decent work standards entails advocating for fair wages, safe working conditions, and access to social protections for migrants.
- Safeguarding migrant workers: The ILO actively works to prevent exploitation and abuse, including instances of forced labour and human trafficking. Through its efforts, the ILO has positively impacted millions of migrants globally, crafting international conventions and recommendations to safeguard their rights. Additionally, it provides technical support to governments in developing migrant-friendly policies and programs. The organization's research in migration serves as a vital resource, informing initiatives aimed at improving the welfare of migrants.

The Global Compact for Migration (GCM)

The Global Compact for Migration, ratified at an intergovernmental conference in Marrakesh, Morocco, on December 10, 2018, is the inaugural United Nations agreement dedicated to fostering safe, organized, and regular migration on a global scale. It comprehensively addresses the legal aspects of international migration. Signatories commit to implementing its provisions at various local, regional, national, and global levels.

This Compact serves as a vital framework for enhancing migration governance and presents a significant opportunity to bolster the legal protections afforded to migrants, irrespective of their status. Key objectives include:

- Promoting evidence-based and human rights-oriented policymaking and discourse concerning migration.
- Mitigating the root causes of migration, such as poverty and discrimination, and addressing displacement induced by climate change and disasters.
- Safeguarding migrants' rights to information and legal recognition.
- Expanding and diversifying pathways for secure, orderly, and regular migration, with attention to the needs of vulnerable migrants.
- Ensuring migrants' access to decent work and labour rights.
- Addressing vulnerabilities and human rights abuses in migration contexts.
- Safeguarding the right to life throughout the migration process.
- Combating smuggling and trafficking while protecting the human rights of those affected.
- Upholding human rights at borders through individualized screening and referral processes.
- Protecting the right to liberty and preventing arbitrary detention, with a focus on alternatives to immigration detention.
- Guaranteeing migrants' access to essential services like health care, education, and social support without discrimination.
- Eradicating discrimination and countering hate speech and xenophobia.

- Upholding the prohibitions against collective expulsions and refoulement, ensuring safe and dignified returns and sustainable reintegration.

Provisions in the Indian constitution

Article 23 prohibits trafficking in human beings, forced labour, and similar practices, with violations punishable by law. However, it allows for compulsory service for public purposes without discrimination based on religion, race, caste, or class. Article 24 prevents the employment of children under 14 in hazardous occupations such as factories or mines.

Article 39 outlines principles for state policy, including ensuring adequate livelihoods for all citizens regardless of gender, fair distribution of community resources, prevention of wealth concentration, equal pay for equal work, protection of worker health and children's rights, and providing opportunities for healthy development and protection against exploitation.

Article 42 mandates the state to establish fair and humane working conditions and provide maternity relief. Article 43 obligates the state to strive, through legislation or economic measures, to ensure all workers receive a living wage, decent working conditions, and access to leisure, social, and cultural opportunities.

Human rights violations against migrant workers

Social and Political Violations

Migrant workers encounter a myriad of social and political injustices throughout their lives, spanning discrimination, exploitation, and political marginalization. Discrimination, based on factors such as ethnicity, language, and socioeconomic status, is prevalent, often manifesting in physical or verbal abuse. Our research findings indicate widespread instances of such mistreatment, wherein native populations exploit migrant labourers to fulfil their needs, neglecting their fundamental requirements like housing and sanitation facilities.

Exploitation emerges as another pervasive issue confronting migrant communities. Contractors frequently defraud workers' wages, subjecting them to extended work hours and ensnaring them in various predicaments. These contractors wield their influence to perpetuate exploitation, sometimes with

the complicity of law enforcement, as evidenced by incidents like the Uzhavoor strike. Interstate migrants are particularly vulnerable, often coerced into purchasing alcohol for locals, exacerbating their exploitation and contributing to a host of associated problems. Additionally, the illiteracy prevalent among migrant workers is exploited for further subjugation.

Violence represents a significant threat to migrant workers in Kerala, exemplified by recent rape cases near Aluva, casting a shadow over the social security of migrant communities. Furthermore, instances of fabricated charges against migrant workers, ostensibly seeking retribution, underscore the precariousness of their situation.

Exclusion compounds the challenges faced by migrant workers, as they are often denied political rights, such as voting in general elections and access to essential public services. This systemic marginalization relegates migrant workers to a subordinate status, akin to second-class citizens or, at times, even modern-day indentured labourers.

Cultural violation

Cultural violence targeting migrant workers poses a significant and multifaceted challenge with far-reaching repercussions. This aggression hampers their employment prospects and jeopardizes their safety and well-being. Kerala, in particular, has witnessed several alarming incidents driven by cultural prejudices. In 2022, for instance, a migrant worker was violently assaulted by locals on allegations of theft, while in 2020, migrant workers from Jharkhand were barred from accessing a temple. Another disturbing case involved a migrant worker from Odisha who was not only physically assaulted but also subjected to a forced haircut by residents of Kerala. These distressing events underscore the pervasive nature of cultural violations against migrant workers in the region.

Addressing this issue is inherently complex, as it is deeply entrenched in societal stereotypes and discrimination. Raising awareness is crucial in tackling these challenges, as it can help dismantle ingrained biases and foster empathy and understanding. Upholding the cultural rights of migrant workers is imperative, necessitating concerted efforts to ensure their dignity and inclusion in society. Government intervention is indispensable in fostering a more migrant-friendly environment, encompassing policies and initiatives to safeguard their rights and promote mutual respect and harmony among all community members.

Health issues

Health is a critical concern for migrants, with utilization rates of healthcare services often low due to various factors such as alienation from governmental health systems and the high cost of private hospitals. Urban and rural governmental bodies are tasked with ensuring accessible health infrastructure for everyone, but practical challenges persist. Despite Kerala's efficient healthcare system, migrant workers face obstacles in accessing these services, including limited operating hours that clash with their work schedules. Awareness about available healthcare facilities is lacking among many migrants, compounded by discrimination and language barriers, particularly for Hindi-speaking workers. Migrant workers, frequently engaged in hazardous construction work, emphasize the importance of healthcare due to the inherent risks of accidents and injuries. Despite constitutional provisions guaranteeing equitable healthcare access for all citizens, regardless of mobility, ensuring its realization remains challenging.

Institutional violations

In Kerala, migrant workers face significant challenges due to institutional violence. This includes exploitation and discrimination by both individuals and establishments. Wage theft is rampant, particularly paying below the minimum wage. Various factors fuel this institutional violence, such as the power imbalance between employers and workers. Additionally, many migrants lack proper documentation, leaving them vulnerable to exploitation by employers.

Labour and wage violations

Migrant labourers in Kerala often face various forms of wage exploitation, including delayed payments, coerced labour, and instances of physical or verbal abuse. Timely wage disbursement is a pressing concern among migrants in Kerala, as many struggle to meet necessities such as food and shelter when payments are delayed. This predicament sometimes forces them to work without compensation, exacerbating issues like indebtedness, where migrants rely on high-interest loans from locals when wages are withheld. Consequently, saving becomes nearly impossible, with some migrants falling victim to dishonest local lenders.

This situation perpetuates a cycle of poverty, malnutrition, and even mortality, prompting many migrants to leave Kerala. Since their income solely sustains their families, any disruptions in wage payment directly impact their loved one's well-being. Addressing these challenges necessitates raising awareness among migrants, bolstering local migrant support organizations, and advocating for policy reforms.

Unfortunately, many Kerala residents remain unaware of the plight of migrant labourers, highlighting the imperative for community-driven policy initiatives to support their integration and welfare. Numerous organizations are dedicated to assisting migrant workers, but their effectiveness hinges on robust backing from local communities, both financially and logistically. Current migration policies fail to meet migrants' needs, underscoring the urgency for policy reforms.

Non-governmental organizations (NGOs) and human rights advocacy groups play pivotal roles in pushing for policy changes, emphasizing the importance of collaborative efforts between civil society and government entities to safeguard migrant labour rights and promote their well-being.

Xenophobia

Xenophobia, defined as fear or hostility towards individuals from different backgrounds or cultures, stems from negative stereotypes and can result in various detrimental effects, such as the spread of prejudice, discrimination, and even violence. This prejudice isolates and instils fear in those targeted, particularly impacting migrant workers who face difficulties finding employment and housing due to xenophobic attitudes. It is crucial to recognize that migrant workers are no different from us—they are individuals with families, aspirations, and a desire for a better life. As members of society, we are responsible for treating everyone with equal respect and dignity. Combatting xenophobia requires educating ourselves on its harmful effects and actively speaking out against discrimination and prejudice in all forms.

Conclusion and Recommendations

In summary, human rights among interstate migrant workers in Kerala reveal a systemic failure to uphold the principles outlined in the Universal Declaration of Human Rights (UDHR). The ongoing violations and the tragic killing of Rajesh Manji highlight the urgent need for substantial reforms.

Despite the Interstate Migrant Workers Act of 1979 being in place for four decades, its provisions remain stagnant, failing to address the evolving challenges migrant workers face. This lack of progress has created a significant gap in safeguarding the rights of those seeking employment in Kerala, contributing to an environment where violations go unpunished.

The brutal murder of Rajesh Manji, a migrant worker from Bihar, exemplifies the harsh reality many face in Kerala. His death not only exposes the failure to implement the 1979 Act but also sheds light on the discriminatory living conditions endured by migrant workers, contradicting the principles of the UDHR.

There is an urgent call for a thorough review and amendment of existing legislation to address these grave human rights violations. The Interstate Migrant Workers Act must be revisited to ensure it meets contemporary challenges and international standards, offering robust protection for migrant workers' rights. However, strengthening legal frameworks alone is insufficient; there must also be rigorous enforcement mechanisms and accountability measures to deter abuses and hold perpetrators responsible.

Additionally, fostering awareness and understanding among local communities is essential to promote inclusivity and eliminate discrimination against migrant workers. Educational campaigns, cultural exchanges, and community engagement initiatives can foster a more harmonious relationship between migrant populations and host communities.

International bodies and human rights organizations should actively monitor the situation in Kerala and advocate for reforms. Collaboration between the government, civil society, and the private sector is vital to establishing a comprehensive framework that respects the dignity and rights of all individuals, regardless of origin.

The plight of interstate migrant workers in Kerala requires immediate attention and concerted efforts from all stakeholders. Rajesh Manji's tragic death serves as a poignant reminder that the principles of the UDHR must be translated into concrete actions to ensure universal protection of human rights.

Following in-depth discussions with NGOs, social activists, academic experts, migrant workers, and labour organizations, specific recommendations have been formulated, including:

- Government policies should align with international human rights law principles.



- Local self-government bodies must promote harmony between locals and migrant workers.
- Coordination among different departments is necessary to analyze migrant workers' situations comprehensively.
- Proactive measures, including anti-discrimination laws, are crucial for upholding migrants' civil rights.
- Initiatives such as wage equality and access to essential services should be provided for interstate migrants.
- The Kerala government should address violence against migrants through awareness campaigns and victim support.

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