

## **Effect of COVID–19 on Rights of Children of Migrant Labours in India: A Critical Analysis**

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### **ABSTRACT**

The COVID–19 pandemic exposed and aggravated existing social inequalities, with children of migrant labourers in India facing some of the gravest consequences. This paper critically analyses the multi-dimensional impact of the pandemic on the rights of these children, particularly in the areas of education, health, protection, and identity. Despite constitutional guarantees, legislative safeguards, and international commitments under the UNCRC, the sudden imposition of lockdowns and the collapse of support systems disproportionately affected migrant children and pushing many into child labour, malnutrition, psychological distress, and educational exclusion. Judicial responses, though swift in addressing general migrant distress, largely overlooked the specific vulnerabilities of children. Simultaneously, significant policy gaps such as the absence of portable entitlements, inadequate digital access, and disrupted child protection mechanisms undermined children's fundamental rights. This analysis highlights the urgent need for a child-centric emergency response framework, better inter-state coordination, and long-term policy reforms to ensure the protection and empowerment of children of migrant labourers during crises. The paper concludes by recommending structural changes to make children's rights truly resilient in the face of future emergencies.

**Key Words :** COVID–19, Migrant Labourers, Educational Exclusion, Psychological Distress, Child Rights, Child Labour, UNCRC, Judicial Response, Vulnerability, Pandemic Impact

### **INTRODUCTION**

Society has seen that COVID-19 is not just a bio-medical issue. For many, it's a struggle for economic survival and a fight against the injustice of hunger and poverty. The physical distancing necessitated must be balanced with the need of economic survival for the disadvantaged.

Migration of Human is a significant aspect of social science and the oldest action against poverty<sup>1</sup>. There has been a significant difference in the migration process of developed and developing countries. While in India the

migration is more persuaded by push factors like penuriousness, unemployment, regional disparities, family movement, marriage and natural calamities etc. Migration and regional disparities are strongly interlinked and the volume of migration within a given country varies with the degree of diversity of areas included in that country, diversity of people, difficulty of intervening obstacles, and the fluctuations and checks in the economy<sup>2</sup>. According to the 2011 census, there were around 450 million internal migrants who migrated into India as per the 'Place of Last Residence' metric which is a staggering 38%

1. John Kenneth Galbraith, The nature of Mass Poverty, Exford Publication (1979)
2. Lee, E.S., Push and Pull Factors and Lee's Theory of Migration, [https://epgp.inflibnet.ac.in/epgpdata/uploads/epgp\\_content/S000453PO/P001844/M029737/ET/1525155291PS\\_MU\\_15Lee\\_Migration\\_Theory\\_\\_Push\\_and\\_pullModule15Paper10Ed.pdf](https://epgp.inflibnet.ac.in/epgpdata/uploads/epgp_content/S000453PO/P001844/M029737/ET/1525155291PS_MU_15Lee_Migration_Theory__Push_and_pullModule15Paper10Ed.pdf) visited on 28-04-2020.

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(approximately) of the entire population of India. Migration is a reason for helping billions in getting rid of poverty, improving health, education of children, income, and conflict and the decline in migration leads to a less-flexible economy<sup>3</sup>.

The Indian government's response to dealing with the COVID-19 pandemic was undoubtedly very swift but it also manifests an apparent lack of planning and coordination in the scale of its implementation. India could not get many benefits of implementing early lockdown and within a few months, it joined the list of countries most affected by the coronavirus epidemic.

Children of migrant families are one such vulnerable group, and can be classified into the three groups, those left behind by migrant parents; those who migrate with their parents; and those engaged in employment.

This research paper will endeavour to study the reason due to which the lockdown in India couldn't prosper as per the prospect and impact of government policies on the conditions of children of migrant labourers during lockdown in COVID-19. The study is predicated on secondary data and through an analytical and descriptive approach it endeavours to appraise the lockdown policy of the Government of India and underlines the reasons behind the failure of the lockdown. The literature available on the migration, newspaper reports, surveys, government of India census-2011 has been widely consulted for the study. The first part of the research paper provides a preview of international human rights and Constitutional provisions, and the child rights in India. The second part of the research paper critically examines the affect of COVID 19 fixates on children of migrant labour in India. The third and final part of the manuscript focused on the steps taken by government,

judiciary and civil society during the COVID-19 and its impact on children of migrant labour.

## **Legal and Constitutional framework for Child Rights in India:**

### ***Protection to children under International Law:***

The United Nations Convention on the Rights of the Child (UNCRC) is the most comprehensive international treaty concerning the rights and protection of children. It was adopted by the UN General Assembly on 20 November 1989, and India ratified it on 11 December 1992. The UNCRC defines a child as anyone below the age of 18 years, unless majority is attained earlier under a country's national laws. The UNCRC is built on four core principles that guide all its provisions, these are non-discrimination<sup>4</sup>, best interests of the children, rights to life<sup>5</sup>, survival and development<sup>6</sup> and respect for the views of the child<sup>7</sup>. UNCRC provides protection from all forms of physical or mental violence, abuse, or neglect<sup>8</sup>. It protects the children from economic exploitation and child labour<sup>9</sup>. It provides protection from sexual abuse and exploitation<sup>10</sup>. It is protecting from trafficking, abduction<sup>11</sup> and torture or unlawful detention<sup>12</sup>.

United Nations Convention on Rights of Child provides legal protection to the children at length. But in last year, due to sudden lockdown in the country, more than 100 million internal migrant workers suffering hardship after COVID-19 measures forced them to travel long distances home, many on foot." Migrant workers returned to their villages are still unemployed and their children suffered a lot due to bad economic condition of the family. Migrant workers do not have money to return to the cities for jobs. More than the fear of the virus, it is the dread of economic uncertainty that bothers them and

3. Jock Collins, The Immigration scholarship of Stephen Castles, International Migration Volume 61, Issue1, p. 311

4. Art. 2, UNCRC, 1989

5. Art. 3, UNCRC, 1989

6. Art. 6, UNCRC, 1989

7. Art. 12, UNCRC, 1989

8. Art. 19, UNCRC, 1989

9. Art. 32, UNCRC, 1989

10. Art. 34, UNCRC, 1989

11. Art. 35, UNCRC, 1989

12. Art. 37, UNCRC, 1989

affected their children in different aspects.

### ***Constitutional Provisions:***

The Constitution of India recognizes children as a distinct and vulnerable group deserving special protection. It provides a comprehensive framework to safeguard their rights to survival, development, protection, and participation. These protections are enshrined both as Fundamental Rights and Directive Principles of State Policy.

Article 14 provides right to equality before the law and equal protection of the laws to all persons, including children<sup>13</sup>.

Article 15(3) allows the State to make special laws and policies for the welfare of children and women<sup>14</sup>.

Article 21: Right to Life and Personal Liberty includes the right to live with dignity, encompassing access to health, shelter, education, and protection from exploitation. This article has been interpreted to include rights such as:

- o Right to clean environment
- o Right to health and nutrition
- o Right to protection from abuse

Article 21A pertains to right to education provides for free and compulsory education for all children aged 6 to 14 years. This right has been implemented through the Right of Children to Free and Compulsory Education Act, 2009.

Article 23 provides prohibition of Human Trafficking and Forced Labour which protects children from begging, bonded labour, and trafficking<sup>15</sup>.

Article 24 prohibits the employment of children below the age of 14 years in factories, mines, and other hazardous occupations<sup>16</sup>.

Article 39(e) and (f) directs the State to ensure that:

- o Children are not abused or forced by economic necessity to work in unsuitable jobs.
- o Childhood and youth are protected against exploitation and moral and material abandonment<sup>17</sup>.

Article 45: Early Childhood Care and Education mandates the State to provide early childhood care and education for all children below the age of six years<sup>18</sup>.

Article 47 obligates the State to improve nutrition and public health, crucial for child development<sup>19</sup>.

Article 51A (k) imposes a duty on parents or guardians to provide opportunities for education to their children between 6–14 years<sup>20</sup>.

Article 246 & Seventh Schedule allows Parliament and State Legislatures to legislate on subjects related to child welfare such as education, health, and labour<sup>21</sup>.

India's Constitution provides a strong foundation for the protection and promotion of children's rights. While several rights are enforceable through courts, others guide policymaking. However, effective implementation through laws, schemes, and judicial oversight is essential to translate these constitutional guarantees into reality for every child.

### ***Legislative Safeguards:***

- o Right to Education Act, 2009.
- o Child Labour (Prohibition and Regulation) Amendment Act, 2016.
- o Juvenile Justice (Care and Protection of Children) Act, 2015.

Right of Children to Free and Compulsory Education Act, 2009 ensure that every child aged 6 to 14 years receives free and compulsory education as a fundamental right under Article 21A of the Constitution. No child shall

13. Article 14, Constitution of India

14. Article 15(3), Constitution of India

15. Article 21, Constitution of India

16. Article 23, Constitution of India

17. Article 24, Constitution of India

18. Article 39 (e)& (f), Constitution of India

19. Article 47, Constitution of India

20. Article 51A(k), Constitution of India

21. Article 246, Constitution of India

be liable to pay fees or other expenses in name of school fee, dress and books etc. this Act provides equal opportunity to all children, including disadvantaged groups and weaker sections<sup>22</sup>. It prohibits detention of students till class 8<sup>th</sup> and corporeal punishment<sup>23</sup>. It is the obligation of the government to maintain specific standards (e.g., teacher-student ratio, sanitation, and library)<sup>24</sup>. Private unaided schools shall provide 25% reservation for the economically weaker and disadvantaged sections<sup>25</sup>. National and state commission for the protection of Child Rights shall monitor the implementation of the protection of rights. Child Labour (Prohibition and Regulation) Amendment Act, 2016 prohibits the engagement of children in employment and regulates the working conditions of adolescents. This Act impose complete ban on employment of children below 14 years in any occupation or process (except family enterprises and entertainment industry after school hours). It provides a list of 33 hazardous occupations/ processes where adolescents cannot be employed. In case a person employed children and adolescents in contravention of the provisions of this Act, shall be punished with imprisonment up to 2 years and fine and repeat offenders face higher penalties. Act enhanced the powers of the Labour Inspectors and created a District Task Forces.

### Impact of COVID-19 on the Rights of Children of Migrant Workers:

1. **Right to Education:** Education of the children of migrant workers were affected due to closure of school and lack of digital infrastructure. Migrant worker's children lacked access to online learning due to absence of devices,

connectivity, and stable residences. It leads to risk of permanent dropouts, especially among girls and older children pushed into labour<sup>26</sup>.

2. **Right to Health and Nutrition:** Due to COVID-19, *anganwadi* services and school mid-day meals were disrupted. It spiked malnutrition among the children and also increased food insecurity. Poor sanitation in temporary shelters amplified health risks to the children<sup>27</sup>.
3. **Exploitation and Abuse:** There were rise in child labour due to economic distress. Child marriages increased in some states. Absence of monitoring mechanisms during lockdown left children vulnerable to abuse, neglect, and trafficking<sup>28</sup>.
4. **Crisis to right to Identity and Social Protection:** Children of undocumented or inter-state migrants lacked Aadhar-linked documentation, barring them from relief schemes. Exclusion from PDS and healthcare due to non-portable entitlements (pre-implementation of One Nation One Ration Card) result in to lack of social protection<sup>29</sup>.

### Initiatives of Government, Judiciary and Civil Society:

Government of India initiated relief packages, but many were inaccessible to mobile populations due to lack of aggregated data on migrant children. It also hampered targeted interventions. Civil society and NGOs stepped in to provide food, health kits, and educational support to the all in need including children of migrant workers<sup>30</sup>. The Indian judiciary, especially the Supreme Court and High

22. Section 4, RTE Act, 2009

23. Section 16, RTE Act, 2009

24. Section 31, RTE Act, 2009

25. Section 12(1)(C), RTE Act, 2009

26. World Bank, 'COVID-19 Crisis Through a Migration Lens', Migration and Development Brief 32, World Bank, Washington, D.C., April 2020, p. 16.

27. Ibid

28. Child labour and migration (IPEC). Available at: [https://www.ilo.org/ipec/areas/Migration\\_and\\_CL/lang--en/index.htm](https://www.ilo.org/ipec/areas/Migration_and_CL/lang--en/index.htm).

29. Ibid

30. Roadmap for developing a policy framework for the inclusion of internal migrant workers in India, International Labour Organization, December 2020. Road-map-for-the-Inclusion-of-Internal-Migrant-Workers-in-India-ILO-AB-CMID-December2020.pdf

Courts played an active role in responding to the migrant crisis. However, the specific rights of children, particularly those of migrant labourers, often received less focused attention. In *Re: Problems and Miseries of Migrant Labourers*,<sup>31</sup> the Supreme Court took suo motu cognizance of the hardships faced by migrant workers. Supreme Court directed states to provide free transportation, food and shelter. Delhi and Bombay High Courts highlighted in their judgements and directives regarding disruption of mid-day meal schemes, challenges in online education access and poor conditions in migrant camps affecting children of migrant workers<sup>32</sup>. Yet judicial responses remained fragmented and reactive, with no consistent national framework for safeguarding migrant children's rights.

Despite various welfare schemes and legal protections, children of migrant labourers fell through administrative cracks during the pandemic. Most pandemic relief measures were focused on adults (jobs, wages, ration), with minimal focus on child education, health, or safety. No targeted emergency education or psychosocial support policies for children in migrant shelters. Online learning policies excluded children of migrant workers due to lack of access to smartphones or internet and displacement from registered schools, making access to materials impossible. Due to lack of documentation (Aadhaar, school ID), many migrant children were excluded from mid-day meal schemes, PDS benefits, health insurance (Ayushman Bharat) and immunization drives. It was also felt breakdown of child protection mechanism due to staff shortages in Anganwadis, Childline services, CWCs. It resulted in certain incidents of child labour, early marriage, abuse and neglect of children and often unreported. There is inadequate inter-state coordination. No centralized migrant registry or child tracking system. There is lack of clarity on whether the origin or destination state was

responsible for the welfare of migrant children.

### Conclusion:

The COVID-19 pandemic critically exposed the fragility of the rights framework for children of migrant labourers in India. Despite constitutional guarantees under Article 21A (Right to Education) and protections afforded by child-centric legislation like the Right to Education Act, 2009, the Juvenile Justice (Care and Protection of Children) Act, 2015, and the Child Labour (Prohibition and Regulation) Amendment Act, 2016, millions of children faced disruptions in education, healthcare, nutrition, and protection during the crisis. Denied access to education due to the digital divide, deprived of essential nutrition due to disruption of school-based welfare schemes, and exposed to increased risks of exploitation and abuse, the pandemic significantly undermined their rights and well-being.

Judicial responses, though proactive in addressing broader migrant issues, largely lacked a child-centric approach. Simultaneously, the absence of portable entitlements, inadequate implementation of welfare schemes, and the breakdown of child protection mechanisms further compounded their marginalization. The plight of these children was not a result of the pandemic alone, but of long-standing systemic gaps in India's social protection and legal enforcement frameworks.

Moving forward, there is an urgent need for policy reforms that embed child rights at the core of emergency planning. This includes creating robust inter-state coordination, ensuring portability of welfare entitlements, strengthening digital and educational inclusion, and reinforcing child protection institutions. Only through a coordinated, inclusive, and rights-based approach can the nation ensure that the rights of the most vulnerable children are protected not just in times of crisis, but as a constant guarantee of justice and dignity.

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31. *Bandhua Mukti Morcha v. Union of India* (2020) 7 SCC 181

32. *Justice For All vs Government Of Nct Of Delhi & Ors*, AIR 2021 (NOC) 107 (DEL.) and *Reepak Kansal v. Union of India* (2021) 9 SCC 251