

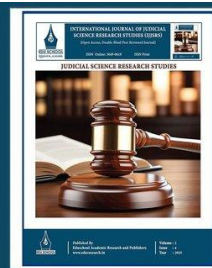


INTERNATIONAL JOURNAL OF JUDICIAL SCIENCE RESEARCH STUDIES (IJJSRS)

(Open Access, Double-Blind Peer Reviewed Journal)

ISSN Online: 3049-0618

ISSN Print: 3108-2785



Labor Rights and Migrant Workers: Comparative Protective Frameworks in South Asia

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Article Information

Received: 16th June 2026

Received in revised form: 4th July 2026

Accepted: 9th August 2026

Available online: 21st August 2026

Volume: 3

Issue: 3

DOI: <https://doi.org/10.63090/IJJSRS/3049.0618.0046>

Abstract

Migrant workers constitute one of the most economically productive yet legally under-protected populations in South Asia. India alone hosts an estimated 139 million internal migrants, with cross-border corridors to Bangladesh, Nepal, and Sri Lanka generating further regulatory complexity. This paper offers a doctrinal and comparative analysis of the statutory and constitutional frameworks governing migrant labor rights across these jurisdictions. Drawing on the Indian Inter-State Migrant Workmen Act 1979, the consolidated labor codes of 2019–2020, Bangladesh's Overseas Employment and Migrants Act 2013, Nepal's Foreign Employment Act 2007, and Sri Lanka's Bureau of Foreign Employment Act 1985, the study identifies convergences, divergences, and enforcement gaps that were exposed dramatically by the COVID-19 lockdowns. The paper argues that formal statutory protection remains undermined by weak registration systems, informal subcontracting chains, and the absence of portable social security. It proposes a rights-based regional framework anchored in ILO Conventions 97 and 143, bilateral labor agreements, and digital portability of entitlements. The findings contribute to ongoing debates on labor justice, informal-sector regulation, and the constitutionalization of socio-economic rights in developing jurisdictions.

Keywords:- Migrant workers, labor rights, South Asia, legal pluralism, constitutional protection, social security, informal labor

I. INTRODUCTION

The movement of labor, whether internal or cross-border, is a structural feature of the South Asian political economy. Migration from agrarian peripheries to urban construction sites, brick kilns, textile factories, and plantation economies has accelerated since the liberalization reforms of the early 1990s. According to the Economic Survey of India (2017), approximately one-fifth of the Indian workforce is mobile, with construction, domestic work, and manufacturing absorbing the largest inflows. In Nepal, remittances from migrant workers account for nearly 22 percent of gross domestic product, while Sri Lanka and Bangladesh sustain comparable dependencies on overseas labor earnings.

Yet the legal condition of the migrant worker remains paradoxical. While migration is constitutive of national economies, legal frameworks continue to treat migrant labor as peripheral, temporary, or anomalous. The catastrophic reverse-migration of the March–May 2020 lockdowns, during which an estimated ten million Indian workers walked or rode home under conditions of acute distress, revealed the chronic failure of state registration, welfare delivery, and grievance redress mechanisms (Srivastava, 2020). Similar vulnerabilities surfaced in the Gulf corridors, where returnee workers from Nepal and Bangladesh faced delayed wages, arbitrary contract termination, and quarantine costs shifted onto them.

This paper examines the protective frameworks governing migrant labor in four South Asian jurisdictions: India, Bangladesh, Nepal, and Sri Lanka. It pursues three objectives. First, it maps the statutory and constitutional architecture in each jurisdiction. Second, it analyzes the enforcement gaps that diminish formal protection. Third, it proposes reforms that draw on regional harmonization, digital portability of entitlements, and the substantive realization of constitutional socio-economic rights. The analysis integrates the recent scholarly intervention of Palliyil (2024), whose examination of labor rights regulating migrant workers in India provides doctrinal orientation for the present comparative inquiry.

II. CONCEPTUAL FOUNDATIONS OF MIGRANT LABOR RIGHTS

The conceptualization of migrant labor rights draws on overlapping registers: international human rights law, labor standards jurisprudence, and constitutional socio-economic rights doctrine. At the international level, the International Labour Organization (ILO) Migration for Employment Convention 97 (1949) and the Migrant Workers (Supplementary Provisions) Convention 143 (1975) establish the core principles of equal treatment, non-discrimination, and protection against abusive conditions. The United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) extends protections to undocumented migrants, though ratification among destination states remains limited.

At the domestic level, migrant workers intersect multiple legal categories: industrial workers under wage legislation, informal workers under social-security schemes, and citizens claiming fundamental rights. The difficulty of sorting migrants into stable legal categories is itself a source of protective failure. As Breman (2013) observed in the Indian context, the migrant is frequently rendered invisible by the very statutes intended to govern industrial labor because of the informal, subcontracted, and spatially dispersed character of the employment relationship.

The conceptual literature identifies three modalities of protection. First, the registration-based model conditions entitlements on formal enrollment with a designated agency. Second, the rights-based model derives protection from constitutional guarantees of life, dignity, and equality, as in the Indian Supreme Court's expansive reading of Article 21. Third, the contractualist model relies on bilateral agreements between sending and receiving states, common in the Gulf corridor. Each modality carries weaknesses: registration models exclude the unregistered, rights-based models depend on litigation capacity, and contractualist models privilege diplomatic over legal remedies.

Palliyil (2024) contends that in the Indian case, the effective enjoyment of labor rights by migrants has been undermined by the bifurcation between formal statutory entitlements and the ground-level realities of informal subcontracting, placement agencies, and seasonal relocation. The present analysis extends this critique comparatively.

III. INDIAN STATUTORY AND CONSTITUTIONAL FRAMEWORK

India's regulatory architecture for migrant labor rests on a combination of specialized legislation and consolidated labor codes. The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979 requires principal employers and contractors to register workers moving across state boundaries, provide displacement allowances, and ensure equal wages. In practice, registration rates have remained below ten percent in most destination states, and the Act's penalties are trivial relative to the economic incentives to evade compliance (Srivastava, 2020).

The consolidated codes adopted between 2019 and 2020 the Code on Wages 2019, the Industrial Relations Code 2020, the Occupational Safety, Health and Working Conditions Code 2020 (OSH Code), and the Code on Social Security 2020 collectively replace twenty-nine prior statutes. The OSH Code subsumes the 1979 Act and extends coverage to 'inter-State migrant workers' employed directly by principal employers or through contractors, defining the category with a monthly wage ceiling. The Code on Social Security establishes a national database for unorganized, gig, and migrant workers, with entitlements to health insurance, old-age protection, and disability benefits. Despite these advances, scholars have observed that the codes retain the registration model's structural limitations, delegate critical rule-making to state governments, and lack robust enforcement machinery (Sundar, 2020).

Constitutionally, the Supreme Court has elaborated a rich jurisprudence on migrant labor dignity. In *Peoples Union for Democratic Rights v. Union of India* (1982), the Court held that non-payment of minimum wages to migrant construction workers constituted forced labor under Article 23. In *Bandhua Mukti Morcha v. Union of India* (1984), it recognized the right to rehabilitation of bonded migrant laborers. More recently, the suo motu proceedings initiated during the 2020 lockdown (*In re: Problems and Miseries of Migrant Labourers*, 2020) resulted in directions for free transportation, food distribution, and the operation of a National Database of Unorganized Workers.

Palliyil (2024) argues that this constitutional jurisprudence, though doctrinally generous, has depended on activist litigation and has not translated into administrative routinization of protection. The gap between declared right and delivered remedy remains the central puzzle of the Indian framework.

IV. COMPARATIVE PERSPECTIVE: BANGLADESH, NEPAL, AND SRI LANKA

Bangladesh operates a distinct regulatory model focused on overseas labor migration. The Overseas Employment and Migrants Act 2013 establishes a grievance redress mechanism, mandates recruitment licensing, and creates a Wage Earners Welfare Board financed by pre-departure contributions. Critics note that the Act is oriented toward regulating private recruiters rather than empowering workers; complaints procedures are cumbersome, and the Welfare Board's benefits have been described as symbolic in scope (Siddiqui, 2016).

Nepal's Foreign Employment Act 2007, together with its 2008 Regulations, institutes a Foreign Employment Promotion Board, mandatory pre-departure orientation, and insurance cover for overseas workers. The Act prohibits discrimination based on gender, though informal bans on female domestic-worker migration have periodically reappeared in executive policy. Nepali migrant workers primarily transit to India under the Treaty of Peace and Friendship 1950, which grants reciprocal rights of residence and employment, creating one of the world's most open cross-border labor regimes. Despite the treaty's formal generosity, Nepali migrants in India rarely access welfare entitlements because of identification, language, and administrative barriers (Thieme, 2012).

Sri Lanka's Bureau of Foreign Employment Act 1985 similarly regulates private recruiters, mandates pre-departure training, and operates a Welfare Fund. Sri Lanka's 2008 National Labour Migration Policy is one of the most comprehensive in the region, embedding a rights-based approach, gender mainstreaming, and return-and-reintegration programming.

Implementation, however, has been uneven, and the Gulf corridor continues to generate recurring reports of wage theft, contract substitution, and confinement.

Three patterns emerge from comparison. First, all four jurisdictions rely on registration-based frameworks that struggle to penetrate the informal recruitment pipelines dominating migrant placement. Second, destination-state cooperation is weak across the region, with bilateral labor agreements frequently lacking enforceable dispute-resolution clauses. Third, women migrants face heightened vulnerabilities, particularly in domestic work, which all four states have attempted to regulate through pre-departure restrictions that often displace rather than reduce risk.

V. ENFORCEMENT GAPS AND THE COVID-19 CRISIS

The COVID-19 pandemic functioned as a stress test for South Asian migrant-labor frameworks. In India, the 21-day national lockdown announced on 24 March 2020 created immediate income collapse for migrant construction, domestic, and informal workers. With inter-state transport suspended and urban shelters inaccessible, millions began journeys on foot that exposed the absence of real-time identification, welfare portability, and grievance redress. The Supreme Court, acting on public-interest litigation, directed states to provide food, water, and transport; the Ministry of Labour subsequently activated the e-Shram portal for unorganized-worker registration in August 2021.

Bangladesh, Nepal, and Sri Lanka each faced returnee surges from the Gulf. Quarantine costs, repatriation logistics, and the reabsorption of unemployed returnees into rural economies strained administrative capacity. In Nepal, the Foreign Employment Welfare Fund extended limited financial assistance, though coverage reached a minority of returnees. Sri Lanka's Bureau of Foreign Employment coordinated repatriation flights, but testing and isolation infrastructure remained overwhelmed. The pandemic revealed four systemic enforcement gaps common across jurisdictions:

- absence of a unique, portable identification that links a worker to entitlements across districts or states
- dependence on employer-initiated registration that chronically under-counts the migrant workforce
- weak administrative sanctions for non-compliance with wage, housing, and safety standards
- limited institutional capacity for rapid welfare delivery during crises. Palliyil (2024) links these gaps to the deeper political-economy failure to treat migrant labor as a site of constitutional entitlement rather than administrative tolerance.

VI. RECOMMENDATIONS

Reform of the South Asian migrant-labor framework should proceed along five axes. First, jurisdictions should institute a portable, biometric-linked worker identification that travels with the worker and automatically updates entitlement status. India's e-Shram platform and Aadhaar interface constitute a foundation, but the platform's extension to cross-border migrants requires bilateral interoperability arrangements.

Second, destination-state liability must be strengthened. Principal employers, not merely contractors, should bear primary liability for wage, safety, and social-security compliance under a statutory chain-of-responsibility doctrine. India's OSH Code moves tentatively in this direction; Bangladesh, Nepal, and Sri Lanka should adopt equivalent provisions for outbound and returning workers.

Third, the region should negotiate a South Asian Framework Agreement on Labor Migration, modeled on the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers (2017), to harmonize recruitment standards, wage protection, and grievance redress. SAARC has the institutional mandate; political will has been the limiting factor.

Fourth, gender-specific protections should be embedded rather than substituted by prohibitionist restrictions on female migration. Restricting women's outward migration displaces rather than reduces risk, pushing women into unregulated channels. Regulation of domestic-work recruitment, standardized contracts, and consular inspection provide more durable protection.

Fifth, constitutional review mechanisms should be strengthened. In India, the Supreme Court's *suo motu* jurisprudence could be institutionalized through a statutory Migrant Welfare Commission with investigative powers. In Nepal and Sri Lanka, constitutional socio-economic rights clauses should be read with directive force on the executive.

VII. CONCLUSION

The South Asian migrant-labor framework exhibits a consistent pattern: formal statutory protection undermined by weak registration, informal recruitment, and limited administrative capacity. The COVID-19 crisis exposed the operational fragility of these regimes and prompted incremental reforms, notably India's labor codes and e-Shram platform. Yet the structural gap between constitutional entitlement and administrative delivery persists across all four jurisdictions examined.

This paper has argued that effective protection requires three shifts. It requires a shift from registration-based to rights-based frameworks, in which entitlements attach to the worker rather than the job. It requires a shift from national-silo regulation to regional harmonization, given the cross-border character of South Asian labor flows. And it requires a shift from episodic judicial intervention to routinized administrative delivery. Palliyil's (2024) intervention offers a starting doctrinal map; the comparative analysis developed here points to a regional reform agenda. The migrant worker is neither marginal nor anomalous to the South Asian economy; the legal framework must finally reflect that centrality.

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