

Migrant Workers and the Pandemic: a socio-legal enquiry into the Inter-State Migrant
Workmen Act, 1979

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The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 (ISMWA), was instituted following the abuses of and malpractices in existing labour laws in India, most relevantly the Contract Labour (Regulation and Abolition) Act, 1970. It was recommended that a central legislation be instituted for the protection and welfare of *adnan* labour, persons recruited by employers on a contract basis to perform semi-skilled or unskilled labour outside their home state. This act would be applicable to those establishments employing workers from another state. The establishments would require to be registered under a registration officer and the workmen (no less than five workers) must be hired through a contractor. With many such clauses, the act became the main legislation for the protection of interstate migrant workers in the intervening decades until it spectacularly failed to protect the rights of lakhs of migrant workers after the announcement of the nationwide lockdown due to the Covid-19 pandemic. This brought into question its efficacy and relevance in a period where the “architecture of inter-state migration has changed significantly over the last three decades” with freedom of movement and a deregulated labour market (Sarkar 2020). To conduct a socio-legal analysis of the ISMWA, my paper will explore the conditions under which the ISMWA Act was created and its inception against that particular political moment in history against the historical background of labour protections in the constitution. I will analyse the recent jurisprudence on the ISMWA such as high court judgments and government affidavits during the lockdown to critically evaluate the response of the courts and the state to the migrant crisis, and map the changing policy recommendations towards the implementation of the ISMWA, including the most recent Occupational Safety, Health and Working Conditions Code, 2020, and its potential to address the challenges faced by migrant workers. Their mass exodus has been termed “exodus constitutionalism” by UpendraBaxi (2020) for an ousted and mobile population bereft of rights and not falling within any state boundaries. I take forward this idea by locating their long march home as a political act that rises against the biopolitical state and the false consolation of a benevolent and caring judiciary. I also take forward KalpanaKannabiran’s (2020) postulation that what Justice Sudarshan Reddy proposed as the “triadic ethical framework of the Constitution” – Fundamental Rights, Directive Principles of State Policy

and Preamble – be at the forefront in interrogating the ISMWA as a document for upholding the rights of interstate migrant workers. The precarity of migrant lives during the lockdown demands a reconfiguration of the judiciary’s commitment to Constitutional principles and the legal framework in place for protecting their rights. This is the framework against which my paper will assess the limits of applicability of the ISMWA.