

**INTERNATIONAL JOURNAL OF LAW  
MANAGEMENT & HUMANITIES**  
**[ISSN 2581-5369]**

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**Volume 3 | Issue 6**

**2020**

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# A Critical Analysis on the Issues and Challenges faced by the Migrant Labourers of India on the outbreak of the Covid-19 Pandemic

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SWASTIKA NANDY<sup>1</sup>

## ABSTRACT

*This article verifies the Migrant workers' present status in India and looks back into the evolution and the very idea behind migrant labour. Initially, the concept of migrant workers seemed to be beneficial, but later there had been certain repercussions. The article focuses on such consequences faced by the workers, the work conditions under which the migrant workers are made to work, and their facilities. The basic idea behind writing this article is to bring out the issues and challenges faced by the migrant labourers and to what extent the idea of economic growth has become fruitful by adopting the concept of migrant labour. In the later part of the article, the researcher states about the laws under which the fundamental rights and Human Rights of the Migrant are protected, i.e., its practical implications. Emphasis is put on the upliftment of women migrant labourers, the work conditions they are put to, the discrepancy in the wage rate, the nature of work, and the hygiene facility provided to women migrant workers. In this paper, the researcher also highlights the condition of the migrant workers' children, where mostly it is witnessed that they are brought up in a miserable condition and are deprived of various facilities. The paper discusses the status of Migrant workers before the Covid-19 pandemic and the hurdles faced by them in terms of wages, working conditions, nature of work, and various financial and medical crisis the workers had to go through post the outbreak of the pandemic.*

**Keywords:** Migrant Workers, Fundamental Rights, Human Rights, Covid-19 Pandemic.

## I. INTRODUCTION

Migrant workers in general terms can be explained as any person who either migrates either within the country or outside the country for the purpose of work. The intention of the migrant workers is not to work in a permanent place in which they work.

The *Encyclopaedia Britannica* defines “migrant labour as casual and unskilled workers who

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<sup>1</sup> Author is a LLM (Corporate and Commercial Laws) student at School of Law, Christ (Deemed to be University), Bangalore, India.

move about systematically from one region to another offering their services on a temporary, usually seasonal basis”<sup>2</sup>.

Migrant workers are among the most vulnerable sections of the general public in the midst of both regularity and crisis. Struggling for a living, they are frequently abused and compelled to work and live in lamentable conditions; the policymakers and the administrators regularly disregard their wellbeing and safety risks making them live in deplorable conditions. Currently, the spread of Covid-19 pandemic has brought recharged consideration, particularly among the academicians and common society associations to in any case dismissed interior transient workers in the length and expansiveness of the nation.

The pandemic has intensified the current weaknesses of these migrant labourers in the provincial and urban financial focuses of India. While a large portion of the intrastate transients could return back home previously and during the lockdown as the inter and intra-area travel boycott was moderate and simpler to sidestep it was the interstate transients who were influenced more and got abandoned in the host states without a vocation or any methods for occupation due to lockdown.<sup>3</sup> Forced to leave their home states because of absence of employment alternatives, the hands on interstate migrant labourers fill the shortfall in certain work escalated divisions of the economy which the local population lean toward not to take up including development, producing, transportation, block furnaces, mining and quarrying, and agriculture.

Relative unavailability to health care, social entitlements, housing, and formal financial and banking services, as well as the non-portability of social security benefits, make these exploited workers generally in the nation's casual area most noticeably terrible influenced by the endless loop of misery and marginalisation. Hence, solid strategy intercessions are appropriate to ensure the human and work privileges of the, in any case anonymous and voiceless, interstate transient specialists, labour rights of the otherwise faceless and voiceless, interstate migrant workers<sup>4</sup>.

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<sup>2</sup> Simon J, Kiss N, Łaszewska A, et al. Public Health Aspects of Migrant Health: A Review of the Evidence on Health Status for Labour Migrants in the European Region. Copenhagen: WHO Regional Office for Europe; 2015. (Health Evidence Network Synthesis Report, No. 43.) ANNEX 2, DEFINITIONS OF LABOUR MIGRANTS, <https://www.ncbi.nlm.nih.gov/books/NBK379428/>.

<sup>3</sup> Madhunika Iyer, “Migration in India and the impact of the lockdown on migrants,” PRS LEGISLATIVE RESEARCH (DEC 12, 2020, 08:53 PM), <https://www.prsindia.org/theprsblog/migration-india-and-impact-lockdown-migrants>.

<sup>4</sup> Sunil D. Santha, Surinder Jaswal, Devisha Sasidevan, Kaushik Datta, Ajmal Khan and Annu Kuruvilla, “Climate change, livelihoods and health inequities: The vulnerability of migrant workers in Indian cities”, *International Institute for Environment and Development (Apr. 1, 2015)*, pp. (34-40).

*The paper will deliberately focus on the Issues' and challenges faced by the deprived migrant workers in transient to the economic and fundamental rights enshrined within the legal domain in our country in light of this pandemic situation.*

## **II. CAUSES OF MIGRATION OF WORKERS IN INDIA**

The migration of workers in India is mostly influenced by the structure and pattern of the society. Migration of workers had been accelerated in India from the time of independence due to various developments and policies of the government and uneven development mechanism along with social disparities among different socio-economic classes. The major portion of the migrants consists of the economically backward classes and the landless poor who mostly belong to the indigenous communities and migrant workers are also constituted of large tribal regions of India where the settlements of the tribals have been destroyed by outsiders and have displaced them and also deforestation plays a major role. During the period of 1996 to 2003, India has witnessed suicide of peasants every 45 mins as during that period Indian agriculture became non remunerative and resulted in the death of lakhs of peasants. This situation in India forced rural people, especially from the downtrodden and backward communities of odisha, Bihar and Uttar Pradesh to travel miles seeking employment at minimal remuneration in construction of roads, irrigation projects, commercial and residential complexes. Many skilled and semiskilled workers left India and migrated to the Middle-East countries as the wage rates were high there. Migration of Professionals such as engineers, medical practitioners, teachers etc., to developed countries forms another dimension of migration which is termed as “brain-drain”<sup>5</sup>.

## **III. LEGAL FRAMEWORK**

- Article 19 (d), (e), and (g) of the Indian Constitution states that “all citizens have the right to move freely throughout the territory of India; to reside and settle in any part of the territory of India; and to practise any profession, or to carry on any occupation, trade or business<sup>6</sup>.” In the Directive Principles of State Policy, Article 39<sup>7</sup> explicitly states that “the citizens, men and women equally, have the right to an adequate means to livelihood;” and that “the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.” Article 43 further directs “the State to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or

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<sup>5</sup> Sri B.K. Sahu, Migrant Workers-Present Position And Future Strategy Towards Social Security.

<sup>6</sup> INDIA CONST. art. 19 cl. (1) (d), (e), (g)

<sup>7</sup> INDIA CONST. art. 39

otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities<sup>8</sup>. “These provisions are the sacred reason for the rights and government assistance of the interstate migrant labourers alongside the enactments sanctioned by the Ministry of Labour and Employment (MOLE).

- Several enactments were authorized that are legitimately and in a roundabout way identified with the transient work of which the most immediate being the Inter-state Migrant Workers (Regulation of Employment and Conditions of Service) Act, 1979. Though limited by their scope and implementation, other significant acts are the Minimum Wages Act, 1948; the Contract Labour (Regulation and Abolition) Act, 1970; the Bonded Labour System (Abolition) Act, 1976; the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996; the Unorganized Workers' Social Security Act, 2008.

- MOLE was established to protect the interest of the workers in organised and unorganised sectors as well as to promote their welfare by providing social security and creating a safe and healthy work environment for them)

- In 2009, the MOLE pronounced the National Policy on Safety, Health and Environment at Work Place to wipe out the rate of 'business related' wounds, illnesses, fatalities, calamity and loss of national assets. The National Policy by perceiving a "protected and sound workplace as a central human right" expresses that "without sheltered, clean condition just as solid working conditions, social equity and monetary development can't be accomplished" in the country. This goes in opposition to the way that transient specialists regularly live in unhygienic, overcrowded and risky conditions in worksites, slum areas or road constructions where social distancing is an extravagance in the current occasions of Covid-19 pandemic.

- The Policy expounds just on business related wounds and infections, as was the situation with all the work laws. The situation like the current spread of a pandemic and the weakness of labourers to 'non-word related' wellbeing dangers, particularly the semi-gifted and incompetent transient workers in the casual divisions, isn't tended to in any current work laws.

#### **IV. MAGNITUDE OF MIGRATION OF WORKERS IN INDIA**

Migration of workers in India is mostly short distance the percentage of which is around 60% of migrants changes their residences within the district of birth and 20% of the

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<sup>8</sup> INDIA CONST. art. 43

workers choose to change their residences within their state, while the remaining percentage of workers choose to move across borders of their respective states. Taking an approx., figure of the total migrants as per the census released in 1971 were 167 million persons which increases to 213 million in the census report of 1981 by 2001 the census report states a total increase to 315 million persons who migrated from one state to another seeking employment for sustaining life. Within a decade, the number of interstate migrant increased to 411 million. It is estimated taking into account the present scenario that there are around 40 million workers employed in construction industry, 20 million are working as domestic workers and around 2-5 million are working as sex workers. There are around 10 million workers who work in illegal mines which are also known as “small-scale mines.” The recent census report states that around five and a half million Indians are employed in the oil exporting countries of the Middle-East<sup>9</sup>. The 2019 census report highlights that around 29% of the entire population in India are daily wage workers who are residing outside their home district<sup>10</sup>.

Taking into consideration the women migrant workers, the statistics states that around 92% women, children and girls who are migrants are employed as domestic workers amongst whom around 20% of the females are under the age of 14 years. As per my research it is found that women travel long distances even for short term employment in the absence of any concrete employment opportunity. The women even if they find employment are forced to work under inhuman conditions in lieu of minimum remuneration and most of the time there are chances they fall victims of sexual abuse<sup>11</sup>.

## **V. ISSUES AND CHALLENGES FACED BY THE MIGRANT LABOURERS OF INDIA ON THE OUTBREAK OF THE COVID-19 PANDEMIC**

The primary issues faced by the migrant workers are mostly related to food, shelter, healthcare, loss of wages and concern about the family. The migrant workers also face harassment and are also put to harsh working conditions and they also are forced to work under extreme climatic conditions and as most of these workers are daily wage workers they are forced to work even at extreme conditions to maintain their livelihood. The outbreak of the Covid-19 pandemic has emerged as a curse for these workers as the

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<sup>9</sup> Sri B.K. Sahu, Migrant Workers-Present Position and Future Strategy Towards Social Security.

<sup>10</sup> Sushant Singh, *Explained: Indian migrants, across India*, The Indian Express, (Dec 20, 2020, 11:48 PM) <https://indianexpress.com/article/explained/coronavirus-india-lockdown-migran-workers-mass-exodus-6348834/>.

<sup>11</sup> Krishnavatar Sharma, *India has 139 million internal migrants. They must not be forgotten*, The World Economic Forum, (Dec 20, 2020, 11:56 PM) <https://www.weforum.org/agenda/2017/10/india-has-139-million-internal-migrants-we-must-not-forget-them/>.

repercussions of the pandemic on these workers are dreadful<sup>12</sup>.

The Covid-19 pandemic have made the lives of the migrant workers miserable as factories and workplaces of the migrant workers were shut down because of the nationwide lockdown. As a result of the closing down of the workplaces due to the nationwide lockdown, workers have lost their employments as a result of which most of the workers and their families were starving and were uncertain about their future. Thousands of workers initiated walking back home as there were no means of transport available due to the lockdown. It is after a considerable period of time when the Supreme Court of India on 9<sup>th</sup> June 2020 passed an order on the transportation of migrant workers, stating that making rules were not enough and the States and the Union Territories need to submit affidavits on steps taken<sup>13</sup>, the Central and the State governments took measures to help them and make necessary arrangements for transportation for the migrant workers. The Supreme Court of India in a recent landmark judgement directed all the States/Union Territories to take necessary steps regarding identification of stranded migrant workers in their State who are willing to return to their native places and take steps for their return journey.

The nationwide lockdown due to the Covid-19 pandemic has resulted in the death of around 300 migrant workers, reasons ranging from starvation, suicide and denial of timely medical care<sup>14</sup>. Taking into consideration the highlighted issues the primary concern that needs to be addressed is Whether the existing laws are enough to protect the rights of Migrant Workers. To reach to a proper conclusion regarding this issue reference is made to the Constitution of India which provides protection of rights and privileges under Part III which deals with the fundamental rights of the citizens of India. Therefore the other issue that comes to mind is How far laws in India have succeeded in protecting the rights of Migrant Workers as prescribed under Part III of the Constitution of India during the pandemic. Reference is made to *Article 19 (d), (e), and (g) of the Indian Constitution states that "all citizens have the right to move freely throughout the territory of India; to reside and settle in any part of the territory of India; and to practise any profession, or to carry on any occupation, trade or business"*<sup>15</sup>. In the Directive Principles of State Policy,

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<sup>12</sup> Understanding the issues of the migrant population- COVID-19, *PSYCHOSOCIAL ISSUES AMONG MIGRANTS DURING COVID-19* (Dec 21, 2020, 12:03 AM) <https://www.mohfw.gov.in/pdf/RevisedPsychosocialissuesofmigrantsCOVID19.pdf>.

<sup>13</sup> In Re: Problems and Miseries of Migrant Labourers, 2020 SCC OnLine SC 613.

<sup>14</sup> *Indian migrant workers during the COVID-19 pandemic*, Wikipedia, (Dec 21, 2020, 12:12 AM) [https://en.wikipedia.org/wiki/Indian\\_migrant\\_workers\\_during\\_the\\_COVID-19\\_pandemic#](https://en.wikipedia.org/wiki/Indian_migrant_workers_during_the_COVID-19_pandemic#)

<sup>15</sup> INDIA CONST. art. 19 (1) (d), (e), (g)

Article 39<sup>16</sup> explicitly states that “the citizens, men and women equally, have the right to an adequate means to livelihood;” and that “the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.” Article 43 further directs “the State to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities<sup>17</sup>. These provisions are the sacred reason for the rights and government assistance of the interstate migrant labourers alongside the enactments sanctioned by the Ministry of Labour and Employment. In a landmark judgement passed by the High Court of Kerala, it was stated that the state has an onerous duty to protect the life, health and liberty of the migrant workers under the ambit of Article 21 and Article 51-A of the Constitution of India. The court further stated that it is the duty of the state governments to ensure healthy working environment to the migrant workers and also directed the state governments, that during the Covid-19 pandemic if any migrant workers are ill treated than measures must be adopted and also passed orders to arrange for transportation facilities for the migrant workers who wanted to travel back to their native constituencies and also stated that no migrant worker could be forcibly detained by their employers. The High Court of Kerala also vested rights on the State government to formulate appropriate legislation or rules as they deem fit in order to ensure security to the migrant workers<sup>18</sup>.

In the contemporary times, after the outbreak of the Covid-19 Pandemic there have been changes that have been brought about by the legislature in India and several new Rules and Regulations have been enacted to tackle the miserable situation of the Migrant workers. In a landmark judgement, Court directed the Union of India to file an affidavit in terms of the kind of portal which is sought to be created, for the registration of migrant labour across the country. Such a portal should have on board all the *state governments so that the ingress and egress of migrant labour is duly recorded and reported*<sup>19</sup>. Such an order was passed because of the incapacity of the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979.

The nationwide lockdown announced by Prime Minister Narendra Modi to counter the spread

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<sup>16</sup> INDIA CONST. art. 39

<sup>17</sup> INDIA CONST. art. 43

<sup>18</sup> *Suo Moto v. State of Kerala*, WP(C) No. 23724 of 2016

<sup>19</sup> *Shashank S. Mangal v. GNCTD*, 2020 SCC OnLine Del 677.



of the coronavirus was a major step taken by the Government of India. This nationwide lockdown has resulted to the closing down of the large-scale industries as well as other organised as well as unorganised sectors due to which the employees have faced an adverse effect especially the migrant workers who work either on daily wage basis and they are not permanent employees therefore their income depend on the availability of work. To address the issue of the economic reliefs and rehabilitation to be provided for the migrant workers who are homeless and jobless as a result of the nationwide lockdown, steps have been taken by the finance minister of our country, targeting the poorer section and have announced that they can claim benefits as part of Central Government Schemes in the form of Ujjwala Yojana for benefits in kind, PM-Kisan, Jan Dhan accounts for cash payments, BPL card for rations<sup>20</sup>.

In India a central registry of migrant workers in not maintained irrespective of the clause being stated under the Inter-State Migrant Workmen Act, 1979. According to the inter-state migrant workers, at the outbreak of the pandemic several initiatives were taken by both the Central as well as the State government to rescue the stranded migrant workers, helping hands were also extended by the NGOs as well. The Government of Assam also provided financial assistance of Rs. 2000 per month for consecutively three succeeding months to the migrant workers of Assam. The state governments have also decided to issue job cards under MGNREGA to migrant workers. Directions have been issued that skill development departments to take necessary steps and impart trainings to reverse migrant workers and also to make available the loan facilities for encouraging them to engage in productive sectors. These measures also faced criticisms as it fell short of requirement in some occasions and could not reach the vulnerable section of the society because of imperfections<sup>21</sup>.

The Occupational Safety, Health and Working Conditions Code, 2019 “*stipulated that protections like displacement allowance, equality of working conditions, accommodation, medical facilities and evaluation would be provided independent of the number of migrant workers onsite, the 2020 version does away with this exemption, even for the portability of Public Distribution System (ration card) benefits. In other words, bare minimum provisions are subject to the increased threshold limit*”<sup>22</sup>.”

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<sup>20</sup> Deepanshu Mohan, *Lockdown: 3 big questions unanswered*, The Printers (Mysore) Private Ltd., (DEC 21, 2020, 01:07 PM) <https://www.deccanherald.com/opinion/in-perspective/lockdown-3-big-questions-unanswered-819842.html>.

<sup>21</sup> Pradyut Guha, Bodrul Islam and Md Aktar Hussain, *COVID-19 lockdown and penalty of joblessness on income and remittances: A study of inter-state migrant labourers from Assam, India*, PubMed Central, (DEC 21, 2020, 01:13 PM) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7537011/>.

<sup>22</sup> Divya Varma, Kavya Bharadkar & Raghav Mehrotra, *India's new labour codes fail migrant workers whose vulnerability was highlighted by lockdown crisis*, Scroll, (DEC 21, 2020, 01:19 PM) <https://scroll.in/article/974137/indias-new-labour-codes-fail-migrant-workers-whose-vulnerability-was->

Women are the treated as the most vulnerable section of the society even at the 21<sup>st</sup> Century, “they face both social as well as structural barriers”. The outbreak of the Covid-19 pandemic under this condition as proved to be a jinx for the women, being reverse migrants. Considering the quoted condition the major concern relating to women, being reverse migrants is to put emphasis on the issues faced by them, as most of them have become financially dependent after the outbreak of the Pandemic. The out-break of the Covid-19 pandemic and the nationwide lockdown have not excused the female workers from the brunt of the situation, instead they been the most affected one as the lockdown took away their means of earning as they became unemployed as a because of which they became financially dependent and most of them have become victims of verbal as well as sexual abuse as well as victims of domestic violence. Most of the women migrant workers used to work as domestic help and due to the outbreak of the pandemic they lost their jobs and had to travel back to their native land as they were deprived of employment as well as they were starving due to the non-availability of resources and they are mostly now dependent on others. The Covid-19 pandemic has also affected the mental health of the women migrant workers, they suffered from high degrees of anxiety and fear. In India women always are discriminated from men, during pandemic aslo they were treated differently and were not made available with proper health facilities due to the existing socio-environmental discrepancies<sup>23</sup>.

The government of India, have taken steps in order to provide social security as well as legal protection to the women migrant workers. Such steps are taken within the ambit of the Unorganized Workers’ Social Security Act, (2008) and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act (2013). There have been other measures as well, like extension of the Rashtriya Swasthya Bima Yojana (RSBY) to cover domestic workers and the notification of Minimum Wages by a few State government<sup>24</sup>.

## VI. SUGGESTIONS AND CONCLUSION

Migrant labourers had been facing various issues and challenges irrespective of their gender, age and ethnicity. The emergence of the Covid-19 Pandemic has made the situations of such workers from bad to worse as during the pandemic most of the migrant workers have lost their jobs due to the complete closedown of the economy as a result of nationwide lockdown.

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highlighted-by-lockdown-crisis.

<sup>23</sup> Ranjana Choudhary, “COVID 19 pandemic: Mental health challenges of internal migrant workers of India.”, Asian Journal of Psychiatry, Volume 54 (DEC 21, 2020 01:20 PM) <https://doi.org/10.1016/j.ajp.2020.102254>.

<sup>24</sup> Domestic Workers’ Laws and Legal Issues in India, WIEGO LAW & INFORMALITY PROJECT, (DEC 21, 2020, 01:31 PM) <https://www.wiego.org/sites/default/files/resources/files/Domestic-Workers-Laws-and-Legal-Issues-India.pdf>.

The migrant workers faced a crisis situation as the pandemic and nationwide lockdown had made it difficult for them to survive. The workers could not even avail transportation and had to walk back home and were not exposed to proper health benefit even at the outbreak of the Covid-19 pandemic. Considering the challenges faced by the migrant workers, the researcher in this research work has suggested the following by which such a situation can be eradicated:

- Government could have made food available to the migrant labour at a lower price and through an easy mean since this was the one of the main reason why they started moving during the pandemic. Food prices were high and they were not easily getting it in the market and also there were no means of earning through which they could afford thare meals a day.
- During the pandemic the main problem which accord was regarding employment, where to work and where to find work. Since the country went into a nationwide lockdown there was no way through which these labour could find work. Measures should have been adopted by the government and regulations and laws could have been imposed in such a way which would not have affected the working life's of these workers. Most of the migrant workers work on daily wage basis and through this only they get their daily livelihoods. So rather than completely stopping them from work it would have been better that government would have allowed them to earn their livelihood by following the Covid-19 guidelines adopted by the government.
- The Migrant Workers should be made aware about the importance of their staying in their present location and also make them aware about the adverse effects of mass movement which could result is a deadly situation as it would multiply the spread of the Coronavirus.

Irrespective of such inhuman conditions in which the migrant workers are treated, a question that strikes the researcher is that under what circumstances are the migrant workers forced to travel to their respective workplaces amidst the seriousness of the Covid-19 pandemic when the entire nation is anticipating a second wave of the spread of the novel Coronavirus.

The challenges faced by migrant workers are more complex in nature. An analysis of the migrating pattern clarifies that the migrant workers contribute more to the development of the country's economy but they are not treated and protected as they should have been. The Central and the State governments must take up necessary steps and provide for necessary measures in order to protect the interests of the migrant workers and safeguard them from

being exploited. The migrant workers must be given exposures to national policy through awareness programmes and facilitate and promote their wellbeing.

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