



**JUSTICE FOR
WAGE THEFT**



JUSTICE FOR WAGE THEFT AMONG INDIAN MIGRANT WORKERS:

A REPORT BY CENTRE FOR INDIAN MIGRANT STUDIES (CIMS)

BACKGROUND

COVID-19 pandemic has been taking a heavy toll on migrant workers in countries of destination by exposing them further into situations of exploitation. Many employers took advantage of this situation and the panic created among migrant workers to practice gruesome

IT'S A THEFT !



WAKE UP ! WAKE UP !

#JUSTICE FOR WAGETHEFT

rights violation. This mainly occurred in the form of terminating workers without notice, withholding wages and service benefits, unlawful deduction of wages, unpaid leave and in worse cases, abandoning workers after all the above. This kind of unlawful deduction, rightly called as 'wage theft' became an extra burden for migrant workers during times when the whole world is fighting a pandemic.

With this subject matter in concern, an international coalition of civil society organizations (CSO's) and trade unions lead by the Migrant Forum in Asia (MFA) launched the Justice for Wage Theft Campaign¹ with an

appeal on governments to establish an urgent justice mechanism that addresses the plight of migrant workers whose wages have been unjustly withheld by their employers. The Centre for Indian Migrant Studies (CIMS) conducted the Campaign and documentation activities in India. According to the MFA², wage theft consists of the total or partial non-payment of a worker's

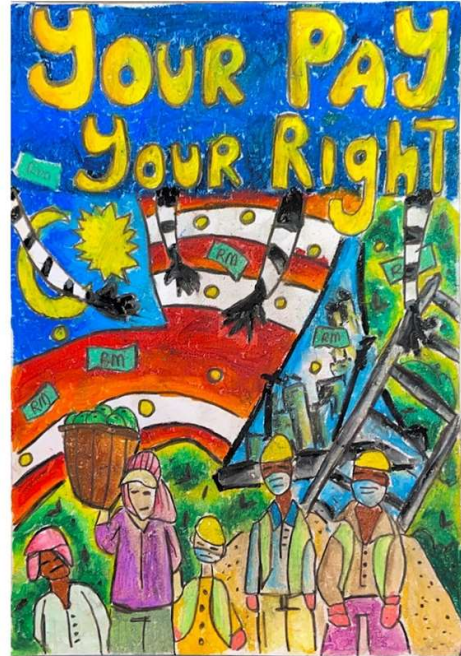
¹ <https://justiceforwagetheft.org/>

² <https://justiceforwagetheft.org/en/page/hnphk6n9whk>

remuneration, earned through the provision of labour services, as stipulated in a written or non-written employment contract. It also includes the payment of salaries below the minimum wage, non-payment of overtime, non-payment of contractually owed benefits, the non-negotiated reduction of salaries as well as the retention of dues upon one's contract termination.

Unpaid wages and dues have been a common issue faced by migrant workers over the years, but data collected as part of Campaign states that this kind of unlawful deduction drastically increased. The issue of wage theft increased when the governments in the Gulf countries allowed businesses who were economically suffering to terminate or reduce the salaries of workers after discussing with them.

The return of Indian migrant workers in large numbers began with the commencement of Vande Bharath Mission ³ in May 2020 for repatriating Indians stranded abroad as a result of global pandemic. The External Affairs Minister, S. Jaishankar said in March 2021 that "a total of 45,82,043 people from 98 countries have returned to India under the aegis of the Vande Bharat Mission.



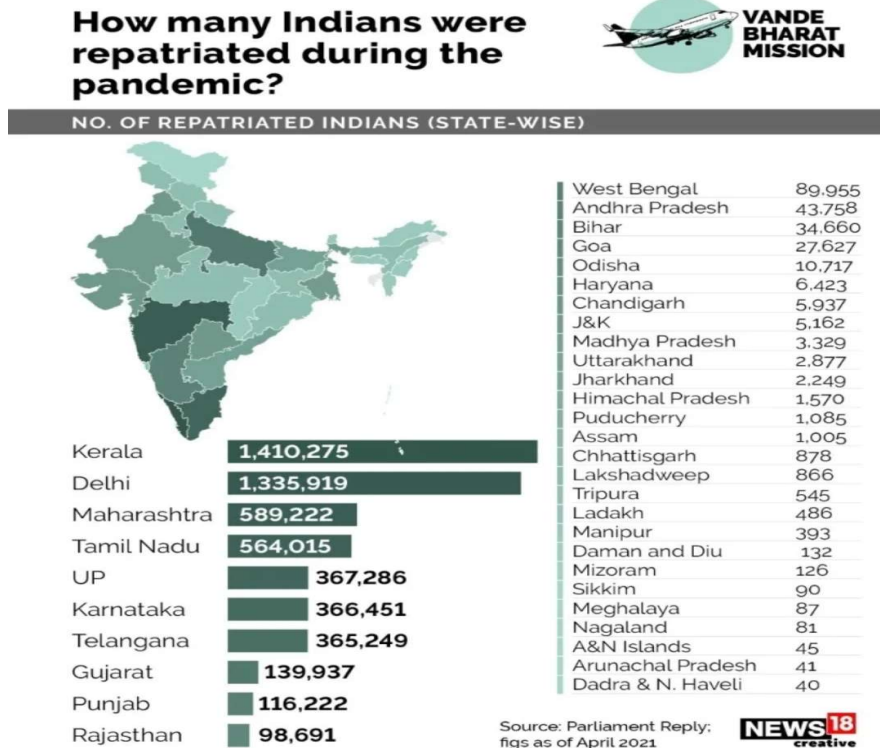
The state of Kerala received the maximum returnees, followed by Delhi, Maharashtra, and Tamil Nadu. UAE was the country from where the maximum number of stranded Indians returned, followed by Saudi Arabia, USA, and Qatar. Thirty-nine per cent of the returnees were workers, 39 per cent were professionals, 6 per cent students, 8 per cent visitors and 4.7 per cent stranded tourists,"⁴. Later in July 2021, the MEA stated that around 60 lakh Indians were brought back during pandemic as on April 30, 2021, in a reply at Rajya Sabha.⁵ These figures

³ <https://www.mea.gov.in/vande-Bharat-mission-list-of-flights.htm>

⁴ <https://www.livemint.com/news/india/4582-lakh-people-from-98-countries-have-returned-under-vande-bharat-mission-11615822875119.html>

⁵ <https://www.aninews.in/news/world/asia/around-60-lakh-indians-brought-back-under-vande-bharat-mission-mea20210722185921>

coupled with the ongoing Vande Bharath Mission indicates that the exodus of returnees to India are certain to increase.



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Data published by the largest receiving state in India throw light into serious socio-economic implications awaiting the country as a good number of returnees came back due to loss of job. COVID-19 Inward - Outward status of Non-Resident Keralites published by the NORKA department⁷ states that a total of 1536278 migrant workers returned until 15th July 2021 and 1098334 Non-Resident Keralites reported reason for return as loss of job.

As part of the Campaign activities in India, supporting evidence to prove this massive injustice happening in the backdrop of global pandemic was collected through structured and personal interviews through phone among migrant workers. Documents such as labour contract,

⁶ <https://www.news18.com/news/auto/complete-list-of-international-vande-bharat-flights-operated-by-air-india-till-october-31-4035107.html>

⁷ <https://norkaroots.org/>

termination letter, bank account statements etc were collected from each worker as evidence. This report consolidates major findings revealed from the data collected by CIMS.

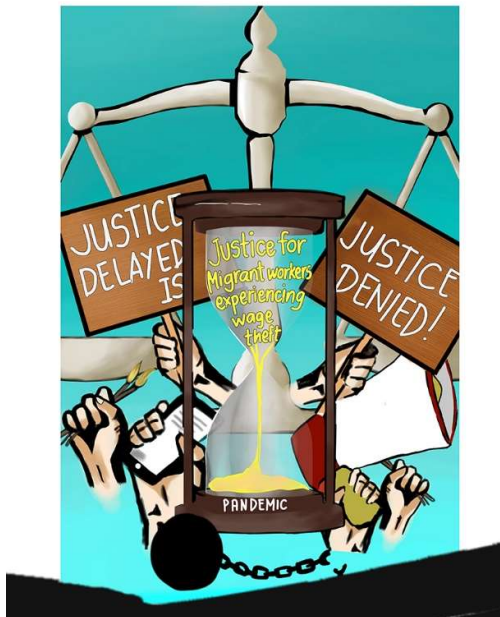
WAGE THEFT AMONG INDIAN MIGRANT WORKERS

As part of extensive survey conducted over a period of one year among 6048 returnees and a small percentage of migrant workers stranded abroad, it was found that 741 (12.25 %) migrant workers reported to being victims of wage theft. 90 percentage of them belong to construction sector, 2 percentage in manufacturing, 2 percentage in transportation and 2.5 percentage comprising of other sectors such as domestic work, retail and medical. Additionally, several respondents confirmed that their wages have been unlawfully denied but did not want to share additional as they stated of having no hope in the recovery of pending dues through available justice mechanisms. These migrant workers were not included in the survey. One of the major challenges faced by all three organisations during the survey was difficulty in accessing women migrant workers to document their experience with wage theft.

In depth interviews with victims revealed that most of them started experiencing wage theft from the beginning of their migration journey through recruitment agents. It was found that several workers used to get wages far below Indian Minimum Referral Wages or minimum wage in destination country. One of the most disturbing revelations was that a total of 26 percentage migrant workers (60 percentage from the state of Kerala) reported wage theft caused by perpetrators of Indian origin. These workers are unable to file complaint in destination country as the Indian owners have in some cases dissolved or disassociate with the company. Because of this it becomes impossible for a terminated employee or returnee to file complaint in both countries of origin and destination. Majority workers testified that they have been either sent back to India in a hurry or abandoned in destination country by employers. One major challenge faced during survey was the unavailability of supporting documents with several workers. It was found that few employees



The COVID-19 pandemic has severely impacted millions of migrant workers in destination countries, many of whom have experienced job loss or non-payment of wages, been forced by employers to take unpaid leave and confined to poor living conditions.



were paid wages by hand which denies any opportunity for gathering evidence in the form of bank transfer receipts. It was observed in group cases that workers were made to forcefully sign on blank papers in exchange of flight back home. Majority returned without filing a case



under the belief that their employer will pay in few months as promised. By the time the returnee identifies the wage theft that occurred, their chances of availing justice mechanisms become distant.

Upon analysis of the data, it was found that these 741 migrant workers belong to 12 States in India. The state of Kerala accounts for maximum reported cases, 397. The number of victims from various states are, Bihar 100, Tamil Nadu 79, Uttar Pradesh 58, Andhra Pradesh 41, Telangana 30, Odisha 21, Punjab 8, Rajasthan 4, Himachal Pradesh 1, Maharashtra 1, Delhi 1 respectively.

REMITTANCE LOSS DUE TO WAGE THEFT

The World Migration Report 2020⁸ states India as the largest country of origin with 17.5 million international migrants and receiver of remittances amounting to USD 78.6 billion. World bank data⁹ states that migrant remittance inflows were 83,332 million USD in 2019 and dropped to 83,149 million USD in 2020. Citing the data collected by CIMS, all 741 migrant workers returned to India empty handed after being denied of wages up to 18 months and end of service benefits amounting to a large sum. An estimate of money lost to returnees because of wage theft was made by CIMS among 741 victims of wage theft documented as part of the Campaign. It was found that a total of INR 1,226,935,924 (USD 16,473,360) has been denied to 741 returnees belonging to different Indian states. This estimate shows an average of 15 lakh rupees (USD 21,338) denied to each worker. These figures are a declaration of the socio-

⁸ https://publications.iom.int/system/files/pdf/wmr_2020.pdf

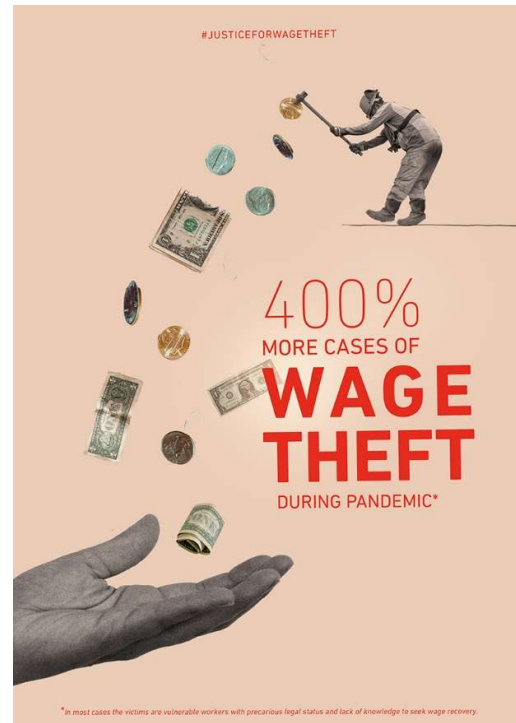
⁹ <https://www.worldbank.org/en/topic/migrationremittancesdiasporaissues/brief/migration-remittances-data>

economic emergency that India is going to face due to wage theft among returnee migrant workers.

ACCESS TO JUSTICE FOR WAGE THEFT

Existing justice mechanism for Indian nationals residing abroad and returned to file their grievance is the Consular Services Management System (MADAD)¹⁰ by the MEA. Despite the Indian government offering various resources such as registration portals, insurance schemes, awareness programs, and help lines, there is no clear guidelines provided in the portal with regards to cases of wage theft/denial of wages. CIMS have assisted several returnees to file their complaints as individual and group cases through MADAD as part of the study to observe efficiency of existing justice mechanisms in handling this issue. Even after a year of filing several grievances, none of the returnees were able to claim their unpaid wages and service benefits through this mechanism. The most common response the workers received was that the respective Indian Embassy has tried to contact the perpetrator, but was unable to get a response.

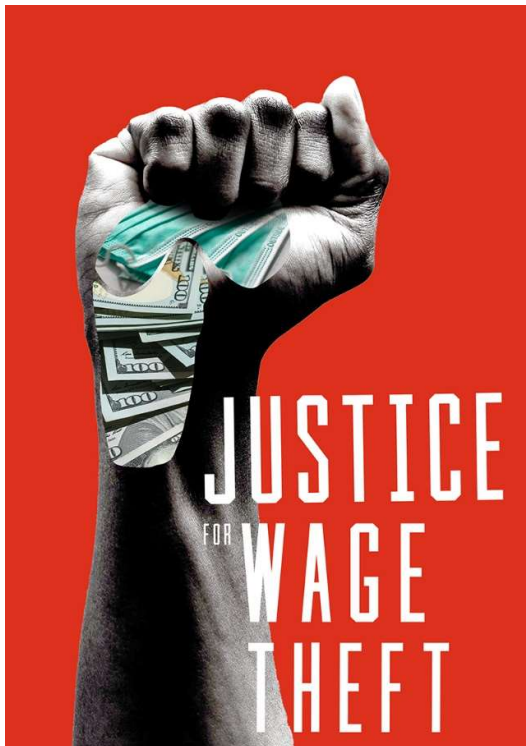
Returnees are provided with the option to avail legal mechanisms in country of destination after issuing a Power of Attorney (POA) through the MEA or to private lawyers abroad. However, it is to be considered that these options differ according to labour laws in each destination country. Countries such as Saudi Arabia and Kuwait permits the access of justice mechanism regarding labour complaints to workers only within a period of one year. A petition was filed representing Lawyers Beyond Borders (LBB) in the High Court of Kerala questioning the effectiveness of existing grievance filing mechanisms for Indian migrants working abroad with the Union and Kerala governments as opposing parties. The Central and State governments



¹⁰ <https://portal1.madad.gov.in/AppConsular/welcomeLink>

responded to the court that existing mechanisms were competent enough to address grievances of this nature.¹¹

It was revealed during the survey that only 9 percentage respondents among 741 were aware of legal mechanisms they could avail to claim unpaid dues and wages after return to country of origin. Justice mechanisms in country of destination was found to be known among all respondents, but their opportunity to access these mechanisms were found to be dependent on the individual worker's socio-economic privileges. Migrant workers who have already lost jobs



and are stranded in country of destination reported difficulty to file cases as issuing POA to a lawyer and transcribing documents cost them around INR 15000 (USD 200). The amount to file POA multiplies to a much larger sum as the migrant worker returns to India due to translation and other charges involved. An ordinary worker who is struggling due to economic crisis cause by wage theft finds it extremely difficult to source the money to access justice mechanisms in most cases. Thus, justice mechanisms existing in India for wage theft are painfully slow and justice is often denied as a result of this delay.

Due to the COVID-19 pandemic and its implications, all returnees reported that they find

it extremely difficult to find new employment opportunities within India and abroad. Many of the wage theft victims who returned empty handed are above 50 years of age and have limited opportunities to remigrate or to start an enterprise of their own. The Draft Emigration Bill 2021¹² places responsibility of rehabilitation on state governments which increases fiscal burden on states, especially those with more returnees. The psychological trauma as a result of wage theft and systemic oppression received during service period was visible during in depth

¹¹ <https://indiankanoon.org/doc/59185938/>

¹² <https://mea.gov.in/emigrationbill.htm>

interviews conducted with all victims. Many of them have lost hope after not receiving any updates regarding their MADAD grievance and some of them continue to knock doors for justice.

RECOMMENDATIONS

Based on evidence collected as part of the Justice for Wage Theft Campaign in India, following are the recommendations to be put forward by CIMS to ensure justice from wage theft among Indian migrant workers.

- Formulate a data bank on returnee migrants with data collected through Vande Bharath Mission, along with coordinated activities from Emigration department to identify victims of wage theft. Different variables of wage theft should be considered during this analysis to locate victims.
- Indian Embassies in GCC countries should provide legal aid or pro-bono lawyers for wage theft cases without time delay and represent the interests of returnees in labour courts. Free legal aid should be provided to migrant workers who are financially weak.
- Indian Embassies should make sure migrant workers who experience wage theft in destination countries file complaint in labour court after issuing Power of Attorney to concerned parties before return to India.
- Mandate pre-departure training/awareness programs for migrant workers to familiarize them with labour laws in respective destination countries.
- The existing mechanism of issuing Power of Attorney to the Ministry of External Affairs for returnee migrant workers should be made accessible promptly as countries such as Saudi Arabia and Kuwait allows workers to file case only within a year of incident.
- The Indian Union and State governments should take necessary steps to ensure that perpetrators of Indian origin are held accountable for their actions against an Indian citizen in countries of destination.
- Sign bilateral agreements with destination countries to address the issues of unpaid wages and other benefits. This should include negotiations on labour laws existing in countries such as Saudi Arabia and Kuwait which denies opportunity for legal options after a period of one year.
- India should ratify international conventions on labour standards and protection of migrant workers to ensure the welfare of all migrants.

- Establish mechanisms for coordination among government, sub-national migration governance bodies, CSO's and various stakeholders to address grievance related to migrants.
- Draft Emigration Bill 2021 does not offer any importance for 'grievance redressal'. The Bill should include a separate section containing clauses on grievance redressal on chapter related to welfare of Indian migrants.
- Reintegration strategies for returnees should prioritize victims of wage theft since majority of them lost jobs during the process and do not possess any economic capital for self-reintegration.
- It is requested that this Report by CIMS may be used as a preliminary study by governments to conduct extensive survey among Indian returnees to identify wage theft victims and to formulate evidence-based policies on the issue.

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MIGRANT FORUM



in ASIA



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For more details on the campaign visit

<https://justiceforwagetheft.org/en/page/kjolr2n202>