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Migrant Workers in India: Socio Legal Aspect

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ABSTRACT

In the socio-economic situation of our country, many workers are forced to leave their homes in the hope of a better future. Most of the workers are uneducated and poor, so they are deprived in many ways. One of the key features of a democratic society is that it should be free from inequity, injustice and unfairness in treatment. Although there are provisions in the various Acts to protect the migrant workers from exploitation and deprivation of their legitimate rights in their work field and for ensuring their safety and security, recent experience shows that those persons (migrant workers) are still subject to exploitation and deprivation not only by their employer but also by their own native neighbours. The present paper attempts to describe the problems faced by the migrant workers in India. It also attempts to identify the issue of protection of migrant workers under both national and international laws governing the same. This study finally suggests that legislation has to be brought in as soon as possible to solve the existing issues.

Keywords: *Migrant Workers, India, Human Rights, Inter-State, Social Justice*

I. INTRODUCTION

“No work is insignificant. All labor that uplifts humanity has dignity and importance and should be undertaken with painstaking excellence.” — Martin Luther King Jr.

The human being has become the best creature created by God. God has given him wisdom and strength, but still human life is not smooth. He has to constantly struggle to survive and keep his family members with him. As a result, he has to move from one place to another for his livelihood. For work he has to go out of his own area or from his state or country. Moving from one place to another is not a new phenomenon. This has been happening for a long time. For rapid industrial development, a large number of workers left their rural areas and moved to the urban areas to earn a living.

Our Constitution of India has also recognized this dynamism of the people by assuring freedom of movement freely throughout the territory of India [Article 19 (1) (d) of Constitution] subject to reasonable restriction. In addition to the Constitution of India, there

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are numerous laws in our country that protect the interest of the migrant workers.

Taking into consideration the safety and exploitation of the interstate migrant workers, our Indian parliament enacted ‘The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979’, to regulate the employment of inter-state migrant workmen and to provide for their conditions of service and others related matters.

Migration in the Census of India is of two types – Migration by Birth place and Migration by place of last residence. When a person is enumerated in Census at a place, i.e., village or town, different from her/his place of birth, she/he would be considered a migrant by place of birth. A person would be considered a migrant by place of last residence, if she/he had last resided at a place other than her/his place of enumeration.²

According to Census 2011, there were 454 million migrants in India. This had risen by 139 million from 315 million in 2001 in Census 2011 and 220 million in 1991, a doubling over 1991-2011. Marriage and other family related migration, which was 72.2% of all migration during 1991 to 2001, now is 74.7% of all migration during 2001 to 2011, but the share of marriage is diminishing while the share of other family related migration is growing. Further, 40% of all internal migrants (309.4 million) across all durations who constituted rural to rural marriage migrants (123.9 million of which 122.3 million were female), only 4.8% were inter-state marriage migrants (6.0 million), i.e., 1.9% of all migrants. By contrast, of the 14.6 million rural to urban migrants for work and business (4.7% of all migrants), 43% (2.0% of all migrants) were inter-state migrants. The corresponding share of such inter-state urban to urban work migrants (2.9 million) is 41% of all urban to urban migrants for work (7.1 million). So, inter-state migration is a significant part of migration for work and business.³

II. DEFINING MIGRANT WORKERS AND THEIR FAMILIES

The most comprehensive definition of a migrant worker is provided in the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (Adopted by General Assembly resolution 45/158 of 18 December 1990)

According to Article 2(1) of the Convention on Migrant Workers, the term “migrant worker” refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.

Article 2 also distinguishes between particular categories of migrant. These include “frontier

² Migration, Drop-in-Article on Census - No.8 , (Accessed January 10, 2021, 8.36 pm) https://censusindia.gov.in/Ad_Campaign/drop_in_articles/08-Migration.pdf

³ REPORT OF THE WORKING GROUP ON MIGRATION January 2017, (Accessed January 10, 2021, 10.16 p.m.) <http://mohua.gov.in/upload/uploadfiles/files/1566.pdf>

worker”, “seasonal worker”, “project-tied worker”, “itinerant worker”, “seafarer” and “self employed worker”; categories which have been excluded from other international standards developed in the past, including ILO conventions specific to the rights of migrant workers.

According to Article 2(2)(a), the term “frontier worker” refers to a migrant worker who retains his or her habitual residence in a neighbouring State to which he or she normally returns every day or at least once a week.

According to Article 2(2)(b), the term “seasonal worker” refers to a migrant worker whose work by its character is dependent on seasonal conditions and is performed only during part of the year.

Part V of the Convention sets out the rights that apply to these particular categories of migrant workers.

In particular, the definition of “self-employed worker” “recognizes the large number of migrant workers who operate a small family business by themselves or with other family members.”

These definitions apply across all regions of the world.

In addition, the Convention recognizes migrant workers as social entities and extends recognition of rights to members of their families. Article 4 provides the following definition:

The term “members of the family” refers to persons married to migrant workers or having with them a relationship that, according to applicable law, produces effects equivalent to marriage, as well as their dependent children and other dependent persons who are recognized as members of the family by applicable legislation or applicable bilateral or multilateral agreements between the States concerned.⁴

III. CAUSES OF MIGRATION

If we go a little deeper and analyze, we will see that there are many reasons behind the migration of workers. We can divide these factors into four areas respectively, i.e. Environmental, Economic, Cultural and Socio-political. Within that, the reasons may also be ‘push’ or ‘pull’ factors.

Push Factors

By pushing factor we mean the factors that force the individuals to move voluntarily and in

⁴ Promoting and Protecting the Rights of Migrant Workers, Asia Pacific Forum, Chapter 1: The International legal framework on the rights of migrant workers, P.3, (Accessed January 13, 2021) <https://nhri.ohchr.org/EN/IHRS/Documents/APF%20publication%20-%20promoting%20and%20protecting%20the%20rights%20of%20migrant%20workers.pdf>

many cases, they are forced because the individual risk something if they stay.

We can say as an example of the push factor that poverty, lack of work opportunities, unemployment and underdevelopment, poor economic conditions, lack of opportunities, natural calamities, scarcity of irrigated land etc.

Pull Factors

By pulling factor we mean all those factors in the destination country that attract the individual or group to leave their home. Those factors are known as place utility, which is the desirability of a place that attracts people.

Some examples of pull factors are employment and higher education opportunities, higher wages, facilities, better working conditions etc.

IV. ENSURING THE HUMAN RIGHTS OF MIGRANT WORKERS

Human rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. We are all equally entitled to our human rights without discrimination. These rights are all interrelated, interdependent and indivisible.

Universal human rights are often expressed and guaranteed by law, in the forms of treaties, customary international law, general principles and other sources of international law. International human rights law lays down obligations of Governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups.⁵

Therefore, migrant worker, as non nationals are generally entitled to the same human rights as citizens. Migrant workers deserve some kind of special protection under the international human rights law. While the “International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families”, is the only UN instrument of direct relevance to migrant workers. Article 2(1) of the convention defines ‘migrant worker’ as to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national. For the migrant workers and their family members, the rights which are available are similar to the rights available in the Declaration on the Human Rights of individual who are not Nationals of the Country in which they live. There are several other UN instruments that are of potential importance in terms of protecting the human rights of migrant workers from discrimination, exploitation on the ground of their

⁵ United Nations Human Rights, visited on January 14,2021, available at: <https://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx>

non-national status. These special kinds of rights may be mentioned in the following International Conventions.

- (a) International Convention on the Protection of the rights of All Migrant workers and Members of Their Families, 1990.
- (b) Migration for Employment Convention (Revised), 1949 (No.97),
- (c) The Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143).
- (d) The Universal Declaration of Human Rights, 1948.
- (e) International Covenant on Civil and Political Rights, 1966
- (f) The Convention on the Elimination of All forms of discrimination Against Women.
- (g) The Convention on the Elimination of All forms of Racial discrimination.
- (h) The ILO Forced Labour Convention, 1930
- (i) The Convention on the Rights of the Child
- (j) Freedom of Association and Protection of the Right to Organise Convention, 1948 (No.87)
- (k) Equal Remuneration Convention, 1951 (No.100)
- (l) Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
- (m) Minimum Age Convention, 1973 (No. 138)

V. ILO CONVENTIONS AND MIGRANT WORKERS

In addition to the international human right treaties, the ILO has established a number of conventions that outline and protect the labour rights of migrant workers.

In particular, the ILO has approved two major conventions specifically on the rights of migrant workers :

1. Migration for Employment Convention, 1949 (C-97)
2. Migrant Workers (Supplementary Provisions) Convention, 1975 (C-143).

These conventions are supplemented by two (non-binding) ILO recommendations that provide further guidance on how the rights of migrant workers can be protected in practice :

1. Migration for Employment Recommendation (Revised), 1949 (R-86)
2. Migrant Workers Recommendation, 1975 (R-151).

The **Migration for Employment Convention** deals with international migration for

employment and focuses on the recruitment of migrants and conditions of work in the host country. Its major provisions include non-discrimination in wages, union activities and benefits and social security (Article 6). The Annexes deal with private and public recruitment, stressing that there should be a no-fee public option, the need to provide contracts for prospective migrant workers and that “any person who promotes clandestine or illegal immigration shall be subject to appropriate penalties” (Annex II, Article 13).

The **Migrant Workers (Supplementary Provisions) Convention** is the first treaty to deal directly with the rights of migrants in irregular situations. It addresses in detail issues in relation to “migrations in abusive conditions” and the “promotion of equality of opportunity and treatment of migrant workers”. Article 2 requires each member State to “seek to determine whether there are illegally employed migrant workers on its territory” and article 6 calls for penalties against traffickers and for the illegal employment of migrant workers. Article 9 sets out requirements for “equality of treatment” in wages, social security and other benefits arising from the past employment of undocumented migrant workers. There are a number of other ILO conventions that also have great relevance for migrant workers. For example, the Domestic Workers Convention, 2011 (C-189) is the most recent ILO convention and is particularly relevant as many domestic workers are migrant women.⁶

VI. CONSTITUTIONAL RIGHTS OF MIGRANT WORKERS

The preamble of our Constitution declares India to be a sovereign, socialist, secular, democratic republic and secure justice, liberty, equality and fraternity to all the citizens of India. The socialist character of the Indian Constitution is also emphasized in the Preamble, which spells out the aspiration of the people to secure to all citizens, social, economic and political justice. Social justice enables the courts to uphold legislations :⁷

- (a) to remove economic inequalities,
- (b) to provide a decent standard of living to the working people,
- (c) to protect the interest of the weaker sections of the society.

The constitution of India is the first and foremost law that protects the labours rights. The fundamental rights and the directive principles of state policy including Preamble provide various rights to the migrant labour.

⁶ Promoting and Protecting the Rights of Migrant Workers , Chapter 1: ‘The international legal framework on the rights of migrant workers’, P.8, visited on January 20,2021, <https://nhri.ohchr.org/EN/IHRS/Documents/APF%20publication%20-%20promoting%20and%20protecting%20the%20rights%20of%20migrant%20workers.pdf>

⁷ P.M.Bakshi, The Constitution of India, Universal Law Publishing Co.Pvt.Ltd., 1997, P.2

Social security is of utmost importance for the well-being of workers, their families and communities as a whole. It is a basic human right and a fundamental means for the creation of social cohesion, thereby contributing to social peace and social inclusion. Social Security protects not just the subscriber but also his/her entire family by giving benefit packages in financial security and health care. Social Security schemes are designed to guarantee at least long-term sustenance to families when the earning member retires, dies or suffers a disability. Thus the main strength of the Social Security system is that it acts as a facilitator - it helps people to plan their own future through insurance and assistance.⁸

The concept of Social Security is based on ideals of human dignity and social justice. It has been well recognized that society has the responsibility to relieve economic distress faced by individual members on account of contingencies beyond their control. The Workmen's Compensation Act, 1923 was the only major legislation on the subject enacted before independence. When the Constitution of independent India was adopted, Social Security was specifically included in the Constitution. A number of Directive Principles of State Policy (Articles 38 (i), 39 (e), 41, 42 and 43) relating to Social Security were incorporated in the Constitution. Legislation on different aspects of Social Security was also done, along with *the introduction* of various schemes. Successive five year plans have *emphasized* the need for Social Security with wider coverage and better benefits.⁹

The Constitution of India from, Articles 14-16, 19(1)(c), 23-24, 38, and 41- 43A directly concern labour rights.

Article 14 states everyone should be equal before the law, article 15 specifically says the state should not discriminate against citizens, and article 16 extends a right of "equality of opportunity" for employment or appointment under the state.

Article 19(1)(c) gives everyone a specific right "to form associations or unions". Article 23 prohibits all trafficking and forced labour, while article 24 prohibits child labour under 14 years old in a factory, mine or "any other hazardous employment".

Article 38(1) says that in general the state should "strive to promote the welfare of the people" with a "social order in which justice, social, economic and political, shall inform all the institutions of national life. In article 38(2) it goes on to say the state should "minimize the inequalities in income" and based on all other statuses.

⁸ SOCIAL SECURITY FOR INTERNATIONAL MIGRANT WORKERS, Addendum to Notes on Agenda Item-2 (January 23, 2021, 12.10 p.m.) https://labour.gov.in/sites/default/files/Addendum_to_Agenda_Item-2.pdf

⁹ Social Security, Report of the National Commission on Rural Labour, Volume I, 1991, p.228 (January 23, 2021, 12.17 p.m.)

Article 39 (d) Constitution of India proclaims 'equal pay for equal work for both men and women' as a Directive Principle of State Policy. 'Equal pay for equal work for both men and women' means equal pay for equal work for everyone and as between the sexes.

Article 41 creates a "right to work", which the National Rural Employment Guarantee Act 2005 attempts to put into practice. Article 42 requires the state to "make provision for securing just and human conditions of work and for maternity relief".

Article 43 says workers should have the right to a living wage and "conditions of work ensuring a decent standard of life". Article 43A, inserted by the Forty-second Amendment of the Constitution of India in 1976, creates a constitutional right to codetermination by requiring the state to legislate to "secure the participation of workers in the management of undertakings".¹⁰

VII. THE INTER – STATE MIGRANT WORKMEN (REGULATION OF EMPLOYMENT AND CONDITION OF EMPLOYMENT AND CONDITIONS OF SERVICE) ACT, 1979

In Orissa and in some other States the system of employment of Inter-State migrant labour known as Dadan Labour is in vogue. In Orissa Dadan Labour is recruited from various parts of the State through contractors or agents called *Sardars* or *Khatadars* for work outside the State in large construction projects. At the time of recruitment *Sardars* or *Khatadars* promise that wages calculated in piece-rate basis would be settled every month but usually this promise is never kept. Once the worker comes under the clutches of the contractor, he takes him to a far-off place on payment of railway fare only. No working hours are fixed for these workers and they have to work on all the days in a week under extremely bad working conditions. The provisions of the various labour laws are not being observed in their case and they are subjected to various mal practices. The question of protection and welfare of Dadan Labour was considered by the Twenty-eighth Session of the Labour Ministers' Conference held on 26th October 1976 at New Delhi. It was recommended to set up a Compact Committee to go into the whole question and to suggest measures for eliminating the abuses prevalent in the system. Accordingly in February, 1977 the Compact Committee was constituted and it recommended, *inter alia*, that a separate Central legislation may be enacted to regulate the employment of inter-State migrant workmen as it was felt that the provisions of the Contract Labour (Regulation and Abolition) Act, 1970, even after necessary amendments, would not adequately take care of the variety of mal practices indulged in by

¹⁰ Negi, Chitranjali, Human Rights Violations of Migrants Workers in India During COVID-19 Pandemic (June 17, 2020). (January 24,2021) Available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3629773

the contractors, *Sardars* or *Khatadars*. The recommendations of the Compact Committee were examined in consultation with the State Government and the Ministries in the Government of India. Accordingly the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Bill, 1979 was introduced in the Parliament.¹¹

Salient features of the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Services) Act, 1979 are as –

1. This Act extends to the whole of India.
2. This Act applies –
 - (a) to every establishment in which five or more inter-State migrant workmen (whether or not in addition to other workmen) are employed or who were employed on any day of the preceding twelve months,
 - (b) to every contractor who employs or who employed five or more inter-State migrant workmen (whether or not in addition to other workmen) on any day of the preceding twelve months.
3. All migrant workers who are employed individually outside his own State are not covered under this Act rather only those who are employed through contractor will be treated as inter-State migrant worker.
4. Every contractor is required to obtain a licence from a licensing officer, appointed by the State Government, for recruiting any person in a State for the purpose of employing him in any establishment in another State.
5. Without being registered under the Act, a principal employer can not employ any inter-State worker.
6. The contractor is under duty to issue to every inter-State migrant worker, a passbook affixed with a passport size photograph of the workman and indicate information about the worker, including payment, advances paid etc. in Hindi and English and where the language of the worker is not Hindi or English, also in the language of the workman.
7. An inter-State migrant workman shall in no case be paid less than the wages fixed under the Minimum Wages Act, 1948.

¹¹ The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, (Accessed January 26,2021) <https://clc.gov.in/clc/acts-rules/inter-state-migrant-workmen#>

8. A journey allowance of a sum not less than the fare from the place of residence of the inter-State migrant worker in his State to 'the place of work in the other State shall be payable by the contractor to the worker both for the outward and return journeys, and he/she will be entitled to payment of wages during the period of such journeys as if he were on duty'.¹²

Besides, there are other Acts which are also applicable for the migrant workers like :

1. The Employees Compensation Act, 1923
2. The Minimum Wages Act, 1948
3. The Equal Remuneration Act, 1976
4. The Contract Labour (Regulation and Abolition) Act, 1970
5. The Child Labour (Prohibition and regulation) Act, 1986
6. The Payment of Gratuity Act, 1972
7. The Unorganised Workers' Social Security Act, 2008
8. The Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996.

VIII. CONCLUSION

“The saving of labour of the individual should be the object and honest humanitarian considerations, and not greed, the motive”. – Mahatma Gandhi

Some challenge faced by the migrant's workers in India are struggling with low wages, physical, sexual & mental exploitation with safety and security.

The Government of India should ratify all the relevant international covenants that respect the dignity of labour, especially important ILO Conventions No.87.the freedom of association and protection of the right to organize convention, and the ILO convention 98, the right to organize and 16 collective bargaining convention.¹³

Prime Minister Narendra Modi on 20th June, 2020 launched an employment scheme with an outlay of Rs 50,000 crore for migrant workers who returned to their home states during the coronavirus-induced lockdown. Launching the 'Garib Kalyan Rozgar Abhiyaan', Modi said

¹² Pandey, Pradeep & Mishra, Prashant. (2012). Protection of Inter-State Migrant Workers in India - An Analysis, (January 26, 2021), https://www.researchgate.net/publication/256016791_Protection_of_Inter-Stat_e_Migrant_Workers_in_India_-_An_Analysis

¹³ Negi, Chitranjali, Human Rights Violations of Migrants Workers in India During COVID-19 Pandemic (January 28, 2021), SSRN: <https://ssrn.com/abstract=3629773> or <http://dx.doi.org/10.2139/ssrn.3629773>

there are some people who might not appreciate the efforts of villagers in the fight against coronavirus but he applauds them for their efforts. The way villages have fought coronavirus has taught a big lesson to the cities, he added.¹⁴

Under the National Food Security Act, 2013, food security measures must be taken for every worker. Ministry of Human Resource Development should encourage States to include migrant children in the annual work plans of Sarva Shiksha Abhiyan. Healthcare facility should be provided to all migrant workers under Rashtriya Swastha Bima Yojana, Employees' State Insurance, Unorganised Workers Social Security Act.

Various State Government have taken steps for the migrant workers to return to their homeland and to provide them jobs under the various centrally sponsored schemes according to their skills.

Lastly, we can say that besides the government of our country, various NGOs and citizens also have to take responsibility

¹⁴ The Economic Times, E-Paper on Jun 20, 2020 (January 30, 2021, 12.02 p.m.) <https://economictimes.indiatimes.com/news/economy/policy/pm-launches-employment-scheme-for-migrant-workers/articleshow/76479291.cms>