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Social Security Mechanism on Inter-State Migrant workers under Pandemic situation in India – A Legal perspective

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ABSTRACT

In the outbreak of COVID-19 pandemic situation the states and centre has announced nationwide lock down in end of March which caused immense distress to the inter-state migrant worker in India. In order to protect the welfare of such workers it is to be recalled a law relating to inter-state migrant worker in India so called the Inter-State Migrant Workmen (Regulation of employment and conditions of service) Act, 1979. In fact the national and international instruments are concerning with such workers by providing socio-economic status at the workplace through social security schemes. That apart in normal situation workers who do not have socio-economic assistance the obligation of the government is to safeguard the life of the inter-state migrant workers and their families. This paper is discussing about the legal safeguards of the inter-state migrant workers in India particularly in a pandemic situation those who do not have work or undeclared unemployment condition. Most of the migrant workers are uneducated and poor, vulnerable and displaced people so the rise of migrant employment to be an inevitable due to their economic need and other situations in India. The need of social security welfare measures to be significantly sufficient to the inter-state migrant workers in India.

Keywords: *Social security, Inter-State Migrant workers, Pandemic situation, Constitution of India.*

I. INTRODUCTION

In the technological world workers and their rights including livelihood are unreported and unspoken by every stakeholder in every corner of the world. Usually workers are employed in organized sector as well unorganized sector in which the concept of migrant workers has been evolved in twentieth century. International Labour Organization (ILO) has made certain Migrant Labour Convention and Recommendations like International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990),

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Convention concerning Migration for Employment (No. 97), the Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (No.143), the Recommendation concerning Migration for Employment (No. 86), the Recommendation concerning Migrant Workers (No.151).² As migrant workers play an ever more important role in models of increased economic development of a country. Migration is a form of mobility in which people change their residential location across defined administrative boundaries for a variety of reasons, one of the reason is economic need of a people to get the work in a migrated place, which may be involuntary or voluntary, or a mixture of both. The decisions on whether to move, how, and where are complex and could involve a variety of actors in different ways. The National and International instruments are concerning with such workers by providing and protecting socio-economic status of migrant workers at the workplace through social security schemes. International Labour Organization (ILO) Conventions are relating to aboard migrant workers that is getting work from one country to another under immigration. Article 27 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) Convention³ stipulates that, with respect to social security, migrant workers and members of their families shall enjoy the same treatment granted to nationals in so far as they fulfil the requirements provided for by the applicable legislation of that State and the applicable bilateral and multilateral treaties. Particularly the Inter-state migrant workers living conditions of are often unsatisfactory. They face serious housing problems and, although they contribute to social security schemes, they and their families do not always enjoy the same benefits and access to social services as nationals of the host State.

According to the 2011 Census India has 56 million inter-state migrants, of which 40 million live in urban areas. Of these roughly 34 million work in the informal sector. Roughly 79% of India's migrants work for daily wages in factories or construction sites.⁴ Most migrants in the country originate from Uttar Pradesh and Bihar, followed by Rajasthan and Madhya Pradesh. The cities of Mumbai and Delhi attract the highest number of migrants. While most men migrate for work, women migrate due to marriage. Though the central government has made a special law⁵ for inter-state migrant workers in India the social security mechanism would be

²The International Convention on Migrant Workers and its Committee, Office of the United Nations High Commissioner for Human Rights, Fact sheet no. 24 (rev.1), United Nations New York and Geneva, 2005

³ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)

⁴Sanjay kumar, Director of Mittal Institute, Harvard University, (2020), "What government agencies can do to ensure safety and security of migrant workers", The Times of India – 16th May, 2020

⁵ The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979

significantly sufficient.

As migrant workers play an ever more important role in models of increased economic integration, more workers will run the risk of losing their entitlement to social security.⁶ Protecting the right of migrant workers to social security is important, not only for securing the equality of treatment in social security for migrant workers, but also for extending social security coverage to currently unprotected population. In the outbreak of COVID-19 Pandemic situation the centre and state has announced lockdown measures which caused job loss to the migrant workers and they significantly are under force to return to their native towns.⁷ In India, with a share of almost 90 per cent of people working in the informal economy, about 400 million workers in the informal economy are at risk of falling deeper into poverty during the crisis.⁸

In this paper is focusing on inter-state migrant workers social security measures and its legal scenario in India. *Firstly* the paper is analyzing the meaning of the term migrant workers and Pandemic situation for understanding further nature of discussion on this concept. *Secondly* this paper is enumerating constitutional and legal aspects of inter-state migrant workers status in India. *Thirdly* in the pandemic situation how about the social security measures are being given to the inter-state migrant workers in India. In the concluding part this paper is emphasizing the enforcement of the legal provision to the inter-state migrant worker in India and its critical analysis to be mentioned.

II. MEANING OF MIGRANT WORKMEN AND PANDEMIC SITUATION

As migrant workers play an ever more important role in models of increased economic development of a developing country. Generally Migration is a form of mobility in which people change their residential location across defined administrative boundaries under various reason like economically poor, marriage and other reasons. The economic need of migrant workmen is a major reason and such people to get the work in a migrated place. The term 'migrant workmen' is traced from the *Encyclopaedia Britannica* which defines migrant labour as casual and unskilled workers who move about systematically from one region to another

⁶ Social security for migrant workers : a rights-based approach / Kenichi Hirose, Milos Nikac, Edward Tamagno ; International Labour Organization, Decent Work Technical Support Team and Country Office for Central and Eastern Europe. - Budapest: ILO, 2011 ; Kenichi Hirose, Senior Specialist in Social Security of the ILO Decent Work Technical Support Team and Country Office for Central and Eastern Europe (ILO DWT/CO-Budapest, "Protecting the Social Security Rights of Migrant Workers – an international standards perspective"

⁷ An Article titled "About 400 million workers in India may sink into poverty: UN report" published in economic times dated 08.04.2020; also refer University of Oxford's COVID-19 Government Response Stringency Index, www.economicstimes.indiatimes.com last visited on 08.06.2020.

⁸ The International Labour Organization (ILO) in its report titled 'ILO Monitor 2nd edition: COVID-19 and the world of work', describes coronavirus pandemic as "the worst global crisis since World War II".

offering their services on a temporary, usually seasonal basis.⁹ Generally, there are two basic factors of migration: i) Distance ii) Duration. From the distance point of view, migration can be classified under four categories: i) Rural to Rural ii) Rural to Urban iii) Urban to Rural iv) Urban to Urban. Besides, migration can be divided into following categories: i) Intra-district, ii) Inter-district iii) Intra-state iv) Inter-state v) National and International. From the duration point of view migration can be studied under three categories: i) Casual-temporary ii) Periodic-seasonal iii) Permanent.¹⁰ The Inter-State Migrant Workmen (Regulation of employment and Conditions of service) Act defines “inter-State migrant workman” means any person who is recruited by or through a contractor in one State under an agreement or other arrangement for employment in an establishment in another State, whether with or without the knowledge of the principal employer in relation to such establishment¹¹

The International Organization for Migration (IOM) differentiates economic migrants from labour migrants.¹² It defines several subgroups of migrant worker, including business travellers, contract migrant workers, established migrant workers, highly skilled migrant workers, immigrating investors, project-tied workers, seasonal migrant workers, and temporary migrant workers. Labour migrants are defined as those who move for the purpose of employment. As the Economic migrants concern they form a potentially broader group that includes people entering a state to perform economic activities, such as investors or business travellers, but can be understood also in a narrower sense similar to the category of “labour migrants”.¹³ Under review will be made of two key ILO Conventions – the Equality of Treatment (Social Security) Convention, 1962 (No. 118) and the Maintenance of Social Security Rights Convention, 1982 (No. 157). These instruments establish a framework and a set of internationally agreed principles and rules for the protection of migrant workers’ social security rights through coordination of social security. This paper is concerning with only Indian Inter-state migrant workers whose employment are temporary or seasonal or unorganized moreover they are poor, illiterate and vulnerable. The state and centre has an obligation to provide social security to such workers under pandemic situation when they do

⁹Migrant labour. London: encyclopaedia britannica; 2015. [5 august 2015]. <http://www.britannica.com/topic/migrant-labour>. last visited on 30.05.2020

¹⁰ Dr. W.N. SALVE, “Labour Rights and Labour Standards for Migrant Labour in India”, www.oit.org last visited on 09.06.2020

¹¹ Sec.2(e) of the inter-state migrant workmen (regulation of employment and conditions of service) act, 1979

¹² Simon J, Kiss N, Łaszewska A, Mayer S. 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 43, Annexure II : Definition of Labour Migrants); also refer Usher E. Migration and labour. In: Usher E, editor. Essentials of migration management: a guide for policy makers and practitioners. Geneva: United Nations Publications; 2004.

¹³Ibid.,

not have work due to lockdown situation.

The term **Pandemic** is defined as “an epidemic occurring worldwide, or over a very wide area, crossing international boundaries and usually affecting a large number of people.”¹⁴ The word "pandemic comes from the Greek 'pandemos'. Demos mean the population, Pan meaning everyone. So 'pandemos' is a concept where there's a belief that the whole world's population will likely be exposed to this infection and potentially a proportion of them fall sick.”¹⁵ While *pandemic* can be used for a disease that has spread across an entire country or other large landmass, the word is generally reserved for diseases that have spread across continents or the entire world.

The world health organization has declared certain diseases are pandemic or epidemic diseases like SARS in 2003, H1N1 in 2009 and now COVID-19 are high risk and infected disease and it may spread or outbreaks in the whole world or in number of countries in the world. Social protection measures are viewed as the set of public measures evolved by the state to meet its national and international obligations to eliminate poverty, deprivation and extreme vulnerability. The term social protection must be used in conjunction with the objective of progressive realization of basic socioeconomic rights of citizens to protect themselves against exploitation, poverty and deprivation. Dreze and Sen distinguish between the protective and promotional aspects of social security (Dreze and Sen 1991; 2002). The former is concerned with preventing a decline in living standards, in general, and in the basic conditions of living in particular the later has an objective of enhancing normal living conditions and helping people overcome regular and persistent deprivation.¹⁶

Articles 22 to 26 of UDHR state the universal rights of each individual to a basic standard of life, to proper working conditions, and to social security and social protection. The International Covenant on Economic, Social and Cultural Rights, 1966, again recognizes the right of everyone to social security, including social insurance (Article 9), and Articles 10 to 13 of the Convention elaborate on the right of mothers and infants, the right to a decent standard of living, the right to food, health and education. Subsequent UN conventions have also upheld the right to shelter, principles of nondiscrimination, the rights of the child and so on.

¹⁴ *A dictionary of epidemiology*, 4th edition. New York: Oxford University Press; 2001; also refer Bulletin of the World Health Organization 2011.

¹⁵ An article titled “Coronavirus is now pandemic: What is a pandemic and how it affects you” published in 11.03.2020 Economic Times online news; www.economic-times/indiatimes.com

¹⁶ Ravi Srivastava (2011), “Internal Migration and social protection in India”, National Workshop on Internal Migration and Human Development in India, Workshop Compendium, published by United Nations Educational, Scientific and Cultural Organization In collaboration with Indian Council of Social Science Research (ICSSR), Vol.II, Workshop Papers, New Delhi, Pp173.

III. CONSTITUTIONAL AND LEGAL PERSPECTIVE ON INTER-STATE MIGRANT WORKER IN INDIA

The Constitution of India under Directive Principles of State Policy provides under Article 41, which directs the state to ‘within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance¹⁷ in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want’ and Article 47, by which ‘the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties.

It should be noted that ‘the principle of equal pay for equal work’ is not also strictly adhered to the fixation of wage rates for contract basis male and female seasonal migrant workers as per the Equal Remuneration Act of 1976. Most of the migrant workers are illiterate, ignorant and belong to scheduled castes, scheduled tribes and others socially, economically, weaker sections of the society.

It has been observed that migrant workers are not aware of their rights or labour rights, like right to equality, right to work, right to secure work, a living wage and a decent standard of life, security scheme, health, right to form association, right to freedom, cultural and educational rights etc. There are various workers in the unorganized sectors as a migrant worker in India. Generally, unorganized workers, have been suffered from the problem of unemployment, lack of social security. The ILO estimates suggest that 150 million people are fully unemployed. Many more are forced to eke out a living in casual or occasional jobs, low productivity self, self employment or other forms of unemployment.

The Inter-State Migrant Workmen (Regulation and Condition of Service) Act, 1979 the purpose of the Act is to protect migrant workers whose services are requisitioned outside their native states in India. Whenever an employer faces shortage of skills among the locally available workers, the act creates provision to employ better skilled workers available outside the state.

According to the Act, 1979 certain duties of employer are i) to register the migrant workers

¹⁷ Due to Pandemic situation (COVID-19), the inter-state migrant workers do not have employment and they are under starvation because of continuous lock down in the country. Hence The Finance Minister announced free food grains for the next two months to migrant workers who don't have ration cards with a financial support of Rs 3,500 crore and also refer Sanjay kumar, Director of Mittal Institute, Harvard University, (2020), "What government agencies can do to ensure safety and security of migrant workers", The Times of India – 16th May, 2020

details before the competent authority; ii) to maintain registers indicating the details of inter-state workers; iii) in case of any employment injury or fatal accident, ensure that the information of the same to be informed to authorities of the states concerned and to inform the same to the kins of the deceased through the contractor. The role of the Chief Labour Commissioner of India is most important with regard to the migrant workers concern. He has to maintain the state wise data of the migrant workers, now in the digital era, the data has been uploaded and stored in digital form.¹⁸ The Act was very old and rights of the migrant workers are in hotspot and there is an urgent need to enact a governance system for internal migration in India that is a focused and dedicated system of institution, legal framework, mechanisms and practices aimed to support internal migration and protecting their rights.¹⁹

IV. PANDEMIC SITUATION AND SOCIAL SECURITY MEASURES PROVIDED TO INTER-STATE MIGRANT WORKERS

The Central Government has enacted the Inter-state Migrant Workmen (Regulation of Employment and Conditions of Services) Act, 1979 which, inter alia, provides for payment of minimum wages, journey allowance, displacement allowance, residential accommodation, medical facilities and protective clothing etc. The Government has also enacted the Unorganised Workers Social Security Act, 2008 to provide for the welfare of unorganised workers (including migrant workers) on matters relating to life and disability cover, health and maternity benefits, old age protection and any other benefit as may be determined. Under the Right to Education Act, all children below the age of fourteen years have a right to compulsory free education applicable to migrant workmen wards too.

The Central Government has launched the National Health Protection Scheme (Ayushman Bharat) which will cover 10 crore poor and vulnerable families in general and providing coverage up to 5 lakh rupees per family per year for secondary and tertiary care hospitalization. These schemes will also cater to the eligible migrant workers. The Central Government in 2017 launched the social security scheme of Aam Aadmi Bima Yojana (AABY) with Pradhan Mantri Jeevan Jyoti Bima Yojana (PMJJBY) and Pradhan Mantri Suraksha Bima Yojana (PMSBY) to provide life and disability coverage to the unorganised workers, depending upon their eligibility. The converged PMJJBY/PMSBY scheme is for the beneficiaries in the age group 18-50 years and provides for coverage of Rs. 2 lakh, in case of natural death and Rs. 4

¹⁸ Siddharth Sivaraman, "Is the Inter-State Migrant Workmen Act 1979, a dead letter?", Observer Research Foundation, online published dated 21.04.2020, www.orfonline.org last visited on 10.06.2020.

¹⁹ The Report on the 'Social Inclusion of Internal Migrants in India' by UNESCO and UNICEF (2013)

lakh, in case of accidental death. The converged schemes are being implemented through Life Insurance Corporation of India. A premium of Rs. 342 per annum would be required for the converged schemes. The premium would be shared between the State Government and the Central Government in the ratio of 50:50. This Ministry has urged all the states/UTs Governments to give their financial concurrence to cover 50 percent of the premium for all eligible unorganised workers approximately 2.83 crore beneficiaries have been covered under this scheme.²⁰

The Union government is planning to give unemployment benefits to a section of organised workers who may lose their jobs due to the coronavirus pandemic. The government's 'Atal Beema Vyakti Kalyan Yojana', which provides unemployment insurance to workers who have subscribed to the Employees' State Insurance (ESI) scheme, will cover such workers during the pandemic. The Ministry of Labour and Employment is looking to extend the scheme and allow workers to avail of unemployment insurance if they are impacted by coronavirus.

Union Labour and Employment Minister Santosh Kumar Gangwar wrote to all Chief Ministers and Lieutenant-Governors asking them to directly release funds into the accounts of construction workers using the cess collected by their respective Building and Other Construction Workers' Welfare Boards. The Central government has announced free food grain to be provided to migrant workers for next two months (May and June 2020) even non-ration card holders will be benefited and being given 5 kg of free grain per person per month and 1 kg of chana per household per month.

For urban poor, in last two months, Centre has allowed States to use State Disaster Response Funds to set up shelters for migrant workers and provide them food and water, and has provided Rs. 11,000 cr for this purpose. The Finance Minister announced, major labour code reforms are in the pipeline. She says that we want to bring in universal minimum wage, and bring in a national floor wage for minimum wages, so that there is no disparity between states in further we want to make appointment letters and health check-ups mandatory. The Centre has to bring in a definition of inter-state migrant workers.

The Central government has begun one of the most comprehensive exercises to map migrant workers scattered across the country in relief camps, on their employers' premises, or in clusters where they reside. The government wants to create a database of millions of such

²⁰ Government of India Ministry of Labour and Employment Lok Sabha unstarred question no. 991 answered on 17.12.2018 question was raised by Shri A.P. Jithender Reddy: the details of laws enacted, measures implemented /undertaken by the Government to protect the rights of interstate migrant labourers since 2014? www.epfindia.gov.in Last visited on 06.06.2020

workers to ascertain whether a relief package could be announced for the most affected segment of the workforce due to the national lockdown to contain the spread of coronavirus (Covid-19).

Ministry of Labour and Employment has set up 20 control rooms under the Office of Chief Labour Commissioner (CLC) on pan India basis due to issues arising in the backdrop of Covid-19. These control rooms have been set up for following purposes

- i) To address wage related grievances of workers employed in Central Sphere.
- ii) To mitigate the problems of migrant workers through coordination with various state governments. - These call centers can be accessed by the workers through Phone numbers, WhatsApp and Emails. These control rooms are being managed by Labour Enforcement Officers, Assistant Labour commissioners, Regional Labour Commissioners, and Deputy Chief Labour Commissioners of the respective regions. The functioning of all 20 call centers are being monitored and supervised by Chief Labour Commissioner (C) of Head Quarter on daily basis.²¹

The Central and State has arranged transport facility to migrant worker who wants to return to their native towns in India. But the travelling fare to be bear with the migrant workers for their travel. The migrant workers who has engaged or employed in the state such state has to provide all amenities in the relief camps where they are located in relief camps.

V. CONCLUSION

Most of the migrant workers are illiterate, ignorant and belong to scheduled castes, scheduled tribes and others socially, economically weaker sections of the society. The migrant workers are not aware of their rights or labour rights, like right to equality, right to work, right to secure work, a living wage and a decent standard of life, security scheme. Generally the migrant workers are in the unorganized sector in India. In the outbreak of COVID-19 a pandemic situation has been occurred the government has announced lock down due to such situation lakhs of migrant workers living in the city found themselves without work. Their life is to make matters worse, there was little or no guarantee that they would get basic amenities such as food and water at their employed district or state. Though the government has provided sufficient relief to such workers they do not have idea to retain in that state and they try to go by foot on the road to their native towns. These are the major failure in the part of government as well the stakeholder in the country i) the government has lifted and allowed the migrant workers to

²¹ International Labour Organisation (2020), COVID-19: Labour Market Measures (India), this document is published by ILO Decent Work Technical Support Team South Asia and country office for India, www.ilo.org/wcms5/groups last visited on 06.06.2020

travel by train but they have not provided travel fare to them as per the provision of Disaster Management Response Relief Fund; ii) before the announcement of lockdown the government should get the information about the migrant workers from the Chief Labour Commissioner of the concerned state in order to avoid distress to the migrant workers and their families; iii) the displacement of migrant worker during the relaxation of lockdown period and they returned to native towns has caused inconvenient to the host state as well the infected migrant workers. The Supreme court of India has passed the verdict that the travel fare of the migrant workers should bear with the host state which also a delayed verdict and gone to vain to their rights. In order to avoid all these anomalies every stakeholders likely to aware the situation and adhere the principles of social security to the poor migrant workers which would have been benefited to such workers. To save the health of the citizen never be under the cost of starvation of such citizen.
