

EMERGING TRENDS OF INTER- STATE MIGRANT WORKERS IN INDIA: A STUDY OF LEGAL FRAMEWORK

Sangeeta Mandal¹

I. Introduction

Migration of workers in India is in existence from ancient times, but, in the context of and opening up of the world economy it has assumed special significance for the country and the society. According to International Labour Organization's principles and rights at work, core rights are important for working class in the in the world economy. India is a developing country. India adopted new economic policy in 1991, which is known as liberalization, Privatization and Globalisation (LPG). New economic policy has changed the face of the country. Globalisation brings in its wake restructuring of globalization production processes, and employment relations².

There are 20 million domestic workers mostly migrants from rural India. Regular streams of new migrants leave behind scorched fields and emaciated families in the tribal belts of Bihar, Orissa, Chattisgarh, Jharkhand, Assam, and Mizoram for Mumbai, Delhi and other Metros. They are desperate to join the army of domestic workers. They are willing to work for much less than those who are already working. They are victims of constant verbal and sexual abuse and work without any grievance mechanisms. Their situation is made worse by local governments' brutal eviction drives – dislocating and destabilizing the lives of the very people without whom the cities would come to a crippling halt. Further, they have to live in make-shift tents with plastic covers. They are forced to bathe and defecate out in the open. As they are migrant workers, they do not possess Public Distribution System (PDS) Cards and hence are forced to buy food grains and kerosene at higher than market prices. The ruling elite which consider child labour a menace little realize that it is a natural consequence of migrations³.

¹ Assistant Professor, Department of Law, University of North Bengal, P.O.- University of North Bengal, Darjeeling, 734013 (West Bengal).

² Mishra Lakshmidhar, *Can Globalization and Labour Rights co-exist? The Indian Journal of Labour Economics*, Vol.44 No.1 January – March, 2001.

³ B.K. Sahu, **MIGRANT WORKERS -- PRESENT POSITION AND FUTURE STRATEGY TOWARDS**, www.icsw.org/images/docs/Regions/sasia/pub/Migrant-workers-B-K-Sahu.doc.

In the era of globalization, there has been growing casualisation of workers, therefore, workers are struggling for their labour rights and lack of social security, not only, in case of out-migration but also in case of migration within the state. In this paper an attempt has been made to discuss the various legal protection available to the inter-state Migrant Workers in India.

II. Reasons of Migration of Labours in India

Various causes of migration of labour in India are agricultural poverty, the decline of village and cottage industries, poverty of the people, drought affected villages in which absentee of work for about Agriculture is the main source of the population of India. The agriculture on which the bulk of the rural population in our country has to depend for the main source of livelihood. Which is itself largely dependent on the precipitation and distribution of rainfall; failure of rain and consequent failure of agriculture greatly reduce the purchasing power of this large segment of population, recurrence of such situation called as drought⁴. In India, droughts occur once in every five years in some parts of India⁵, viz., West Bengal, Madhya Pradesh, Kerala, Costal parts of Andhrash Pradesh, some parts of Maharashtra state, like Marathwada, east and west parts of Maharashtra, inferior of south Karnataka, Bihar, Orissa, Rajasthan and other parts of India. At present, Cultivators, small and marginal farmers, agricultural labourers, landless labourers etc, have to face the problems of natural calamities in India.

At present, about 27.5 percent of the population is below the poverty line in India, (in which section of the society is unable to fulfill its basic necessities of life like food, cloths and shelter etc). The planning Commission of India in its Approach to the 11th Five year Plan, 2006 estimated that 27.8 percent of population was below the poverty line in 2004-05⁶.

The problem of poverty is directly related to the existence of unemployment, underemployment and low productivity⁷. Agriculture is a seasonal occupation, which cannot open job opportunities round the year to all⁸. In the absence of irrigation facilities permitting multiple cropping, the

⁴ Dr. W.N. SALVE, Labour Rights and Labour Standards for Migrant Labour in India ,[www.oit.org/ legacy/english/ protection/travail/pdf/rdwpaper22a.pdf](http://www.oit.org/legacy/english/protection/travail/pdf/rdwpaper22a.pdf)

⁵ MEDC, (1974) Drought in Mahaarashtra, Bombay.

⁶ Ibid note 3.

⁷ National Institute of Rural Development, (NIRD), (1984), Hyderabad, Report of the Financing the rural poor, February.

⁸ Powar. R.S., The role of agricultural in developing countries Rural India, Vol.46, No12, December.,1983.

monsoon agriculture enjoins on a majority of the rural labour force on an extended period of seasonal unemployment⁹. These help less dispirited unemployed labour leave their village homes and join to swell the already over populated areas not only in India but also in other parts of the developing and developed countries, whose agricultural labours are shifting to industrial sector¹⁰. The majority of the agricultural labourers, small and marginal farmers do not get enough work during the off season, consequently, they migrate from insufficient food and limited sources of geographical areas to job opportunities areas.

Srivastava's study¹¹ shows state wise data of migrant workers in different sectors of India. Haryana state provides employment to a large number of migrant workers from Uttar Pradesh and Bihar. Some workers migrate to Tea and coffee plantations in Karnataka states, West Bengal and Assam states employ migrant labourers from Tamilnadu, Andhra Pradesh and Bihar. Besides, and more than 12 lakh inter-state migrant workers work in the agricultural sector. Brick kilns provide temporary employment to around 10 lakh. Seasonal migrant workers. Various construction workers, road, railway, buildings, dams. Canals etc seem to employ nearly 20 lakh inter-state migrants. Around 45 lakh inter-state migrant workers work for temporary periods in different sectors. Besides, large numbers of seasonal migrants work in the urban informal manufacturing, construction services or transport sectors as casual labourers and so on. In Maharashtra state, there are 10 lakh handloom and power loom workers, 8 lakh workers who are engaged in building and construction sectors. In the Western Maharashtra state, sugar factories engage near about six lakh seasonal migrant workers from drought prone areas of the state. Agriculturally developed regions in West Bengal and Madhya Pradesh draws labourers from other districts within the state or other states¹².

III. International Laws regarding Protection of Migrant Workers

Labour migration is also an important factor for the development of countries of employment, whether these are developed countries in the context of South-North migration or developing countries in the context of the increasing South-South migration. This has been recognised explicitly in

⁹ Myrdal, Gunnar, *The challenge of world poverty, and antipoverty*, International edition, Penguin Books Ltd. London, 1970.

¹⁰ ILO (1960), *Report on why labour leaves the land*, Geneva.

¹¹ Srivastava, Ravi. S (1998), *Migration and the labour market in India*, *The Indian Journals of labour Economics*, Vol.41 No.4. October-December

¹² National Commission on Rural Labour (NCRL) (1991), Vol. Part II, *Reports of the study Group on Migrant Labour*, Government of India, Ministry of Labour, New Delhi.

recent reports on international migration as well as in the initiatives of international organizations setting out principles and guidelines governing this area. Article 22 of the Universal Declaration of Human Rights, every member of society has a right to social security. The ILO declaration on fundamental principles and rights at work is a major step in this direction. Development must bring about an improvement in the living conditions of people. It should, therefore, ensure the provision of basic human needs at all¹³. The international covenant on economic social and cultural Rights of the United Nations is another international instrument bestowing workers with economic social and cultural rights¹⁴. The ILO provides for a tripartite arrangements between employers, workers and state to legislate and execute the international labour standards in the member countries. The international labour standards protect workers in various sectors. They include freedom of association, equal pay for equal work, safe working conditions, abolition of forced labour and sex based discrimination, employment protection, provision of social security, protection of migrant workers, elimination of sexual harassment of women workers and others. These international labour standards were formulated and few of them were amended by the international labour organization between 1919 and 1978 with a view to protect the material and moral interests of the workers¹⁵. In the most recent General Assembly by resolution no. 45/ 158 of 18 December 1990, adopted International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW)¹⁶ taking into account also the principles and standards set forth in the relevant instruments elaborated within the framework of the International Labour Organisation, especially the 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

¹³ Nayar Depak, Work, livelihoods and Rights, The Indian Journal of Labour Economics, Vol.46 No.1, January –March, 2003.

¹⁴ Article 7 of the International Covenant on Economic, Social and Cultural Rights : “right of everyone to the enjoyment of just and favourable conditions of work”.

¹⁵ Singh Manjari, Raising Labour Standards in India through tripartite, consultations, Indian Journal of Labour Economics, vol. 41, No.4, 1998.

¹⁶ UN G.A. Res. 45/158 of 18 December 1990, <http://www.ohchr.org/english/law/cmw.htm>. To date, 34 countries have ratified the Convention: Algeria, Azerbaijan, Belize, Bolivia, Bosnia-Herzegovina, Burkina Faso, Cape Verde, Chile, Colombia, Ecuador, Egypt, El Salvador, Ghana, Guatemala, Guinea, Guyana, Honduras, Kyrgyzstan, Libya, Mali, Mexico, Morocco, Nicaragua, Peru, Philippines, Senegal, Seychelles, Sri Lanka, Syria, Tajikistan, Timor-Leste, Turkey, Uganda, and Uruguay. A further 15 countries have signed the Convention: Argentina, Bangladesh, Benin, Cambodia, Comoros, Gabon, Guinea-Bissau, Indonesia, Lesotho, Liberia, Paraguay, Sao Tome and Principe, Serbia and Montenegro, Sierra Leone, and Togo. The Convention entered into force on 1st July 2003.

Recommendation concerning Migration for Employment (No. 86), the Recommendation concerning Migrant Workers (No.151), the Convention concerning Forced or Compulsory Labour (No. 29) and the Convention concerning Abolition of Forced Labour (No. 105) . The Convention provides that the right to life of migrant workers and members of their families shall be protected by law¹⁷ by the state Parties to the present Convention and no migrant worker or member of his or her family shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment¹⁸. It also states that every migrant worker and every member of his or her family shall have the right to recognition everywhere as a person before the law¹⁹. Article 25 of the Convention states that Migrant workers shall enjoy treatment not less favourable than that which applies to nationals of the State of employment in respect of remuneration and other conditions and terms of employment. The Convention further provides that with respect to social security, migrant workers and members of their families shall enjoy in the State of employment 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. The competent authorities of the State of origin and the State of employment can at any time establish the necessary arrangements to determine the modalities of application of this norm²⁰.

IV. Laws in India for Protection of Migrant Workers

India is a founder member of the ILO. India has ratified 37 of the 181 conventions. The constitution of India upholds all the fundamental principles envisaged in the seven core international labour standards. Out of the seven core labour conventions, India has ratified three, they are (i) forced labour No.29, equal remuneration No.100. and discrimination No.111. The government of India has ratified some conventions such as hours of work industry convention 1919, night work (women) convention 1919, minimum age convention 1919, Right to Association (Agricultural workers), workmen's compensation, 1925, Equal Remuneration convention 1951. However, freedom of association and Right to collective bargaining (convention No.87 and 98) both, However, freedom of association and Right to collective bargaining (convention No.87 and 98) both conventions are not ratified by India due to technical difficulties involving trade union rights for civil servants²¹. According to the Directive Principles of State Policy of the

¹⁷ Article 9 of ICMW.

¹⁸ Article 10 of ICMW.

¹⁹ Article 24 of ICMW.

²⁰ Article 27 of ICMW.

²¹ Ibid note 3.

Indian Constitution²² the state is required to secure for the citizens, both men and women to right to an adequate means of livelihood, equal pay for equal work for both men and women, protection against abuse and exploitation of worker's, economic necessity, protection of their health and strength, to secure for children opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and protect children and a youth against exploitation and moral and material abandonment. The state is also required to make effective provisions for right to work, to education and to public assistance in cases of undeserved want, to ensure just and human conditions of work and maternity relief, to secure work, a living wage and a decent standard of life to participation of workers in the management of industries.

Laws have enacted fixing the hours and minimum wages of labourers and to improve their living conditions. Various security schemes have been framed. Besides, there are various labour laws, like Trade Union Act 1926, The Minimum Wages Act 1948, Employees State Insurance Act 1948, Industrial Disputes Act 1947, Maternity Benefits Act 1961, Contract Labour (Regulation and Abolition) Act 1970, Bonded labour Systems (Abolition) Act 1976, Equal Remuneration Act 1976, Interstate Migrant Workmen (Regulation of Employment) Conditions of Service Act 1979, The Child Labour (prohibition and Regulation) Act 1986 etc. However, these labour laws and policies are applicable for workers in the organized sector only²³. Unorganized workers in India constitute 92 percent of the total workforce in the country. As against this an estimated 8 percent of the labour force in India falls in the formal or organized sector, which is protected by compressive labour laws covering Industrial Disputes, Unfair dismissal trade union rights, wage and working conditions, health, insurance, security schemes etc.²⁴ Recognising the need of providing social security and welfare of unorganised workers and for other matters connected therewith, the Government enacted the Unorganised Workers Social Security Act, 2008 in the 59th year of the Republic of India, to implement a National Social Security Scheme. The Act provides for constitution of National Social Security Board at the central level to recommend schemes related with life and disability cover, health and maternity benefits, old age benefit and other benefits for unorganised sector worker. The Act discusses about the framing of various welfare schemes. The various welfare schemes offered for these unorganised workers are for matters such as life and disability cover, health and maternity benefit etc.

²² Articles 39, 41 and 43 of Directive Principles of State Policy of the Indian Constitution.

²³ Ibid note 3.

²⁴ Ibid.

V. Inter-state Migrant Workmen Act, 1979

The employment system of interstate migrant labour was an exploitative system prevalent more or less in all over India. It was rampantly institutionalised in Orissa and in some other states. In Orissa the migrant labour (called dadan labour locally) through contractors or agents (called Sardars / Khatedars) are sent for work outside the state in large construction projects. This system lends itself to various abuses. Sardar promising at the time of recruitment that wages would be calculated on piece rate basis would not be settled every month as promised. Once the worker came under clutches of the contractor he took him to a far off place on payment of railways fare only. No working hours were fixed for interstate migrant workers and they had to work on all the days in a week under extremely bad working conditions. The provisions of the various labour laws were not being observed in their case and they were subjected to extreme hardship to survive²⁵. Twenty eighth State Labour Ministers conference held on 21-10-1976 recommended for setting up of a small compact committee to examine all issues and suggest measures for eliminating the abuses prevalent in the interstate workers deployment. The compact committee which was constituted in February 1977, recommended the enactment of a separate central legislation to regulate the employment of interstate migrant workers as it was felt the provisions of the Contract Labour (Regulation and Abolition) Act 1970 even after necessary amendments would not adequately take care of the variety of malpractices indulged in by the principal employers/contractors/Sardars/Khatedars etc. and the required facilities to be provided to these workmen in view of the peculiar circumstances in which they are working²⁶.

The recommendations of compact committee had been examined in consultation with the state governments and the relevant central ministries, Interstate Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979²⁷ was passed by both houses of Parliament and President of India gave his assent on 11-06-1979. The purpose of this act is not to encourage interstate migration of workers against the interests of local workers as the principal employers would have to incur more cost in deploying interstate workers. The aim of the Act is to regulate the employment of inter-State migrant workmen and to provide for their conditions of service and for matters connected therewith. The Act defines "inter-State migrant workman²⁸" as any person who is recruited by or through a contractor in one State under an agreement or other arrangement

²⁵ The Statement of Objects and Reasons of the Inter-state Migrant Workmen Act, 1979.

²⁶ Ibid.

²⁷ Ibid.

²⁸ Section 2(e) of the Inter-state Migrant Workmen Act, 1979 .

for employment in an establishment in another State, whether with or without the knowledge of the principal employer in relation to such establishment. Employment of inter-State migrant workmen in any establishment is prohibited unless it is duly registered under this Act²⁹.

VI. Rights of Inter- State Migrated Workers under the Inter-state Migrant Workmen Act, 1979

Under the act is provided that an inter-State migrant workman shall in no case be paid less than the wages fixed under the Minimum Wages Act, 1948. Wages payable to an inter-State migrant workman/under this section shall be paid in 'cash' and not in any other manner/form³⁰. Every inter-State migrant workman is entitled to a displacement allowance at the time of recruitment, which may be either seventy-five rupees or half of the monthly wages payable to him, whichever is higher³¹. Every inter-State migrant workman is entitled to payment of wages during the period of journeys on duty and is also entitled to 'journey allowance' for outward and return journeys from the place of residence in his State to the place of work in the other State³². Several amenities are required to be provided to the work under the act include provision of suitable residential accommodation, adequate medical facilities, protective clothing to suit varying climatic conditions and suitable conditions of work taking into account that they have migrated from another State³³. The inter-State migrant workman may raise an industrial dispute arising out of his employment either in the host State or in the home State after his return to that State after the completion of the contract of employment. He will also be permitted to apply for the transfer of proceedings in relation to an industrial dispute pending before an authority in the host State to the corresponding authority in the home State on the ground that he has returned to the State after the completion of his contract³⁴.

VII. Duties and Obligations of Contractors under the Inter-state Migrant Workmen Act, 1979

It shall be the duty of every contractor to furnish such particulars and in such form as may be prescribed, to the specified authority in the State from which an inter-State migrant workman is recruited and in the State in which such workman is employed, within fifteen days from the date of recruitment, or, as the case may be, the date of employment, and where any

²⁹ Section 6 of the Inter-state Migrant Workmen Act, 1979.

³⁰ Section 13 of the Inter-state Migrant Workmen Act, 1979.

³¹ Section 14 of the Inter-state Migrant Workmen Act, 1979.

³² Section 15 of the Inter-state Migrant Workmen Act, 1979.

³³ Section 16 of the Inter-state Migrant Workmen Act, 1979.

³⁴ Section 22 of the Inter-state Migrant Workmen Act, 1979.

change occurs in any of the particulars so furnished,, such change shall be notified to the specified authorities of both the States³⁵ and to issue to every inter-State migrant workmen, a pass book affixed with a passport size photograph of the workman and indicating in Hindi and English languages, and where the language of the workman is not Hindi or English, also in the language of the workman³⁶. Further it is the duty of every contractor employing inter- State migrant workmen in connection with the work of an establishment to which this Act applies, to ensure suitable conditions of work to such workmen having regard to the fact that they are required to work in a State different from their own State; and in case of fatal accident or serious bodily injury to any such workman, to report to the specified authorities of both the States and also the next of kin of the workman³⁷. A contractor shall be responsible for payment of wages to each inter-State migrant workman employed by him and such wages shall be paid before the expiry of such period as may be prescribed³⁸.

VIII. Role of Appropriate Governments under the Act

Appointment of registration officers to grant and revoke registration of contractors/principal employers/establishments³⁹. The appropriate Government may, by notification in the Official Gazette appoint licensing officers and define their respective limits of jurisdiction and powers⁴⁰. Inspectors will be appointed by the appropriate Government to see that the provisions of the legislation are being complied with. In addition, power has been given to the State Government of the home State to appoint, after consultation with the Government of the host State, inspectors for visiting the establishments wherein workmen from the former State are employed to see whether the provisions of the legislation are being complied with in the case of such workmen⁴¹. Making rules for carrying out the purposes of this Act subject to the condition of previous publication entertaining appeals from the aggrieved parties and disposal of the same as per this Act⁴².

Needless to say, the Act exists only on paper and not in reality. The record of prosecutions or dispute settlement is almost nil. The migrant labourers face additional problems and constraints as they are both labourers and migrants. Hence, there is no improvement in the working and living

³⁵ Section 12 Inter-state Migrant Workmen Act, 1979.

³⁶ Ibid.

³⁷ Section 16 Inter-state Migrant Workmen Act, 1979.

³⁸ Section 17(1) Inter-state Migrant Workmen Act, 1979.

³⁹ Sections 3 & 5 Inter-state Migrant Workmen Act, 1979.

⁴⁰ Section 7 Inter-state Migrant Workmen Act, 1979.

⁴¹ Section 20 Inter-state Migrant Workmen Act, 1979.

⁴² Section 35 Inter-state Migrant Workmen Act, 1979.

conditions for migrant workers. There are no structures to adequately address the basic issues concerning migrant labour relations, leave aside, addressing the whole gamut of labour relations. The reasons are obvious.

IX. Conclusion

Migration of workers has become a social, economic and universal phenomenon in modern times. After independence, many labour laws have enacted by the government of India. Besides, the government also adopted various labour policies in order to improve wages and working conditions of workers in the organized and unorganized sectors. GOI, came up with a new programme called Mahatma Gandhi National Employment Guarantee Act (MGNREGA) in 2006 with twin objectives to create employment opportunity for rural population for certain minimum days in a year as a matter of right and tap the vast reserve of under-employed and unemployed labour force in rural India; particularly women in time of agricultural crisis in particular and non-agricultural seasons in general⁴³.

It was anticipated that the programme will particularly benefit the rural population in lean seasons and reduce distressed migration from rural to urban; increase the purchasing power in general and create necessary physical assets in rural areas using otherwise untapped labour potential in the rural areas⁴⁴. This policy of Indian Government will definitely reduce the number of poor in the rural areas and provide livelihood security. The Interstate Migrant Workmen Act of 1979, provides many welfare schemes for the inter-state migrant workers but it lacks of supervision and transparency in implementation. On the other hand there are no strong trade unions of migrant workers in the unorganized sector. The bargaining power of these migrant workers is thus weaker than workers in the organized sector. To improve the conditions of the migrant workers it is very important that they must be represented by strong trade unions. All interstate workers shall be provided with the benefits of Public Distribution System (PDS) Cards to avoid buying food grains and kerosene at higher prices. The remuneration to interstate workers shall be deposited in their bank accounts and not by cash by the contractors. All the details of the interstate workers deployment outside the state shall be made available to the state authorities promptly. The state government authorities shall conduct mandatory yearly audit of all employers / contractors in a state regarding deployment of interstate workers and submit yearly compliance status or implementation report to the state assembly for their scrutiny.

⁴³ Viswanathan, P.K. and Amit Mandal, NREGAS as Instrument of Gender Mainstreaming : An Exploratory Analysis, *Man and Development*, 34 (3) : 17-36 (Sept.).

⁴⁴ Ibid.