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LABOUR RIGHTS OF THE INTER-STATE MIGRANT LABOUR IN INDIA

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ABSTRACT

Seasonal migration for work is a pervasive reality in rural India. An overwhelming 120 million people or more are estimated to migrate from rural areas to urban labour markets, industries and farms.1[1] Migration has become essential for people from regions that face frequent shortages of rainfall or suffer floods, or where population densities are high in relation to land. Areas facing unresolved social or political conflicts also become prone to high out migration. Poverty, lack of local options and the availability of work elsewhere become the trigger and the pull for rural migration respectively. The term 'unorganized sector' cannot, therefore, be defined and identified solely on the basis of the nature of work of the workers or on the basis of the number of employees in the undertaking and also not on the level of organization. The unorganized sector lacks adequate protection. There are a huge number of Labour Laws enacted in independent India to regularize and regulate the employment procedure for the workers in the unorganized sector.

INTRODUCTION

In India, therefore, rural to rural and rural to urban migration streams constitute the most important streams of migrant labour. In 1971 rural to rural migration stream accounted for the largest proportion of total migration. This stream accounted for nearly 79 per cent of total female migration and 57 per cent of total male migration.[2] According to the 2011 Census (Provisional Report), 453641955 million persons have changed their place of residence within the country and out of this, 46383766 million or 10.22% have left their place for work.[3] A large proportion of migrant labour in rural to rural and rural to urban streams tends to be semi- skilled and unskilled and the migrant labour force in the two streams enters unprotected labour market in the informal sector.[4] Labour market in India, as in the other countries of the Third World, is distinguished into protected and unprotected labour markets.[5] This distinction is related to the division of the economy into formal or organised and informal or unorganised sectors. In local terms, organised sector in India refers to licensed organizations, that is, those who are registered. The term

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1 "Labour and Migration in India", Aajeevika Bureau, available at: <http://www.aajeevika.org/labour-and-migration.php>

2 Ashish Bose, "India's Urbanization 1901-2001", New Delhi: Tata MacGrawHill Publishing Company, (Second revised edition) 1980, p. 193.

3 "Annual Report 2016-17", Ministry of Labour & Employment, Government of India, available at: <http://labour.gov.in/sites/default/files/English_Annual_Report%202016-17.pdf> last accessed: 8th Oct., 2017

4 E. Haribabu, "Migrant Labour and Labour Legislation in India: Some Observations", available at: <http://ijsw.tiss.edu/greenstone/collect/ijsw/index/assoc/HASH0129/76e77c5c.dir/doc.pdf> last accessed: 8th Oct., 2017.

5 Ibid.

'organised' is generally used to refer to enterprises or employees where the relationship between the employer and the employee is easily ascertainable. The term 'unorganised sector' cannot, therefore, be defined and identified solely on the basis of the nature of work of the workers or on the basis of the number of employees in the undertaking and also not on the level of organization. However, the First National Commission of Labour (NCL), under the chairmanship of Justice Gajendragadkar, defined the unorganised sector as that part of as the workforce who have not been able to organize in pursuit of a common objective because of constraints such as (a) casual nature of employment, (b) ignorance and illiteracy, (c) small size of establishments with low capital investment per person employed, (d) scattered nature of establishments and (e) superior strength of the employer operating singly or in combination.[6]
In spite of its vast and significant economic contribution, the unorganised sector lacks adequate protection. There are a huge number of labour laws enacted in independent India to regularise and regulate the employment procedure for the workers in the unorganised sector. The unorganised sector comprises the various categories of workers including those who are migrating for seeking employment as migrant worker. There are unorganised workers in the organised sector also. The vast majority of the migrant workers fall in the unorganised sector. Basically, the workers who move from state to state seeking employment on temporary or seasonal basis without becoming the permanent residents of the state where they work are known as inter-state migrant worker.[7] A migrant worker is thus, essentially temporary or seasonal in character, it comes and goes.
In India, the Inter–State Migrant Workmen (Regulation of Employment and Conditions of Service) Act[8] (hereinafter referred to as ISMW Act) is a significant legislation on Inter–State migrant workmen. The migrant workers are recruited from various parts of a particular state through contractors or agents for work outside that state. This system lends itself to various abuses. Low wages, no fixed working hours for the migrant workers and they have to work on all the days in a week under extremely bad working conditions and the provisions of the various labour laws are not being observed in their case. In light of this, it will be useful to examine the provisions of the inter-state migrant workmen (Regulation of Employment and Conditions of Service) Act, 1979 along with other labour laws and their success, if any, in securing the intended reliefs and benefits to the inter-state Migrant workers in the country.

WHO ARE MIGRANT WORKERS?

It is agreed that workers, who move from state to state seeking employment on temporary or seasonal basis without becoming the permanent residents of the state where they work are known as inter-state migrant worker. Migrant worker is thus essentially temporary or seasonal in character, it comes and goes. According to ISMW Act, "inter–state migrant workman" means any person who is recruited by or through a contractor in one state under an agreement or other

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[6] Government of India, Report of the First National Commission on Labour, 1969, p. 417

[7] "International Labour Standards on Labour Migration", International Labour Organization, available at: <http://www.ilo.org/global/topics/labour-migration/standards/lang--en/index.htm> last accessed: 28th Oct., 2017

[8] Act 30 of 1979.

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arrangement for employment in an establishment in another state, whether with or without the knowledge of the principal employer in relation to such establishment."[9]

The term 'migrant worker' is also associated with the concepts of contract labour and bonded labour. The important labour laws involved in regulating migrant workers are the Inter-State Migrant Workers Act, 1979, the Bonded Labour (Abolition) Act, 1976 and Contract Labour (Regulation and Abolition) Act, 1970. Inter-state migrant workers form a large part of contract labour with the additional and aggravating character of having come from another state. In its turn, contract labour is largely bonded labour.[10] Contract and migrant labour, sub- species of bonded labour is peculiar in Indian industries. Employees Compensation Act, Trade Unions Act, Payment of Wages Act, Industrial Disputes Act, Minimum Wages Act, Employees State Insurance Act, Employees Provident Funds Act, Maternity Benefit Act, Payment of Bonus Act, Contract Labour Act, Payment of Gratuity Act, Equal Remuneration Act, Bonded Labour System Act, Inter-State Migrant Workmen Act, Building and other Constructions Workers Act, Building Workers Welfare Cess Act, Unorganised Social Security Act are labour laws in India relevant for migrant workers. There are special sectoral laws also including Inter-State Migrant Law, Contract Labour Act, Bonded Labour Act, Building and Construction Workers Act and Building Workers Welfare Cess Act. These Acts are directly or indirectly applicable to the workers in the unorganized sectors. These sectoral laws either abolish or prohibit an abominable practice like bonded labour or they seek to regulate exploitative condition by regulating conditions of service etc.

LAW ON CONTRACT LABOUR

The system of recruitment of contract labour through contractor has taken deep roots in many industries in India. 'Contract labour' can be distinguished from direct labour in terms of employment, relationship with the principal establishment and method of wage payment. Unlike direct labour, which is borne by the pay or muster roll of the establishment and entitled to be paid wages directly, contract labour largely is neither borne by the pay roll nor is paid directly.[11] The establishment which forms 'out work' to a contractor or contractors does not own any direct responsibility in regard to their labour.

In order to do away with the primitive system of contract labour the Parliament of India passed Contract Labour (Regulation and Abolition) Act in the year 1970. The primary objectives of the Act are to stop exploitation of contract labourers by contractors and establishments. The Act does not provide for a total abolition of contract labour system but it provides for abolition of contract labour in appropriate cases. This Act has been enacted for a twin purpose, viz., (i) To abolish the

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9 Section 2(e), Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979

10 Giovanni Di Lieto, "Migrant Labour Law", Irwin Law, available at: <https://www.irwinlaw.com/titles/migrant-labour-law> last accessed: 28th Oct., 2017.

11 D. Samuel Abraham, "The Issues, Concerns, Problems and Remedies in Managing the Contract Labour", Law Brain, available at: <http://www.lawbrain.in/Contract-Labour.pdf> last accessed: 29th Oct., 2017.

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contract labour and (ii) To regulate the working conditions of contract labour wherever such employment is required in the interest of the Industry.[12]

Inter-State Migrant Workers form a large part of contract labour with the additional and aggravating character of having come from another state. Therefore, initially the Contract Labour Act was enacted to regulate the Inter-State Migrant Workers in certain circumstances. The provisions of the Contract Labour Act do not adequately protect the interest of the workers who migrated from the native State to other state in search of their livelihood. Some employers, bypassing or finding loopholes in the laws enacted for the protection of the interests of the workers, with the sole objective of achieving higher productivity, has in turn has affected the employer-employee relationship. In order to avoid the clutches of law, the principal employer prefers to engage workers on contract and not on his rolls.[13]

The contract labourers in most of the cases are a floating community who has no alternative but to leave their places of residence and go wherever they find employment in whatever possible manner. In several cases, there is a large scale of exploitation in wages, conditions of work, working hours and security of employment of the needy workers who have no alternative but to accept the terms offered by the contractors/principal employers. Insufficiency of provisions of the law has resulted non-delivering the intended justice to contract labour. Apart from these, the machinery created by the government is hopelessly inadequate to enforce the provisions of the Act. The Compact Committee constituted in 1977 recommended the enactment of a separate central legislation 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 malpractices indulged in by the contractors. This gave a way for the birth of the Inter- State Migrant Workmen Legislation.[14]

LEGAL REGIME ON BONDED LABOUR

Indian law as well as International Law prohibits the use of bonded labour. Under its own fundamental law and as a party to International instruments, India is obliged to prohibit all forms of bonded labour system. A person becomes a bonded labourer when their labour is demanded as a means of repayment for a loan. A large number of rural landless labourers in India have been the victims of the practice of bonded labour. There are various ILO Conventions, which prohibit forced or compulsory labour. The term forced or compulsory labour shall mean all work or service, which is exacted, from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.[15] India has also ratified the ILO convention (No.29 of 1930)

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12 Ibid.

13 Gurdeep Singh, “Migrant Workmen and the Law: Identification, Motivation, Legal Awareness, Wages and Welfare Measures, Social Security”, Deep and Deep Publications, New Delhi, 2002, p.11.

14 “Introduction: The Inter-State Migrant Workmen Act”, Labour Department, Government of NCT of Delhi, available at: <http://www.delhi.gov.in/wps/wcm/connect/doit_labour/Labour/Home/Acts+Implemented/Details+of+the+Acts+Implemented/The+Inter-State+Migrant+Workmen+Act/> last accessed: 1st Nov., 2017.

15 ILO Forced Labour Convention, 1930 (No.29) (Article 2(i)).

on forced / bonded labour.[16] Article 23(1) of the Constitution of India, relating to fundamental rights, states that the "traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law". Thus, where a person provides labour or service to another for remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the words 'forced labour' under Article 23 of the Constitution. The word 'force' must therefore be construed to include not only physical or legal force, but also force arising from the compulsion of economic circumstances which leaves no choice of alternatives to a person and compels him to provide labour or service even though the remuneration received for it is less than the minimum wage.

It is very significant to note that use of bonded labour also contravenes the provisions of Article 21 of the Constitution. In Bandhua Mukti Morcha v. Union of India,[17] the question of bondage and rehabilitation of some labourers was involved. The court held that the right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Article 41 and 42 and at least, therefore, it must include protection of the health and strength of the workers men and women, of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief.

In Orissa, the inter-state migrant labour is known as Dadan labour. The system of employment of Dadan labour is prevalent not only in Orissa but other States also. The Compact Committee[18] appointed by the Government of India examined the whole question of Dadan labour of Orissa and suggested measures of eliminating the abuses of the system. The Compact Committee in its report observed that the "characteristics of the Dadan labour systems resembled in some cases to bonded labour system."[19] Dadan labour is a form of contract labour and labourers are recruited from various parts of the state of Orissa for work mainly in large civil works/project outside the State.[20] The Committee rightly outlined the chain of relationship between the principal employer and the Dadan labour[21], which is given on the left. While portraying the miserable plight of the Dadan labour, the Committee observed that the Payment of Wages Act, Minimum Wages Act, Workmen's Compensation Act, Contract Labour Act, Bonded Labour System (Abolition) Act,

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16 Ravi S. Srivastava, "Bonded Labor in India: Its Incidence and Pattern", Cornell University ILR School, available at: <http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1017&context=forcedlabor> last accessed: 1st Nov., 2017.

17 AIR 1984 SC 802.

18 "Compact Committee Report", 1978, Ministry of Labour, Government of India, p.1.

19 Id, p.2.

20 Ibid.

21 Gurdeep Singh, "Migrant Workmen and the Law: Identification, Motivation, Legal Awareness, Wages and Welfare Measures, Social Security", Deep and Deep Publications, New Delhi, 2002, p.9.

Maternity Benefit Act, Employees' Provident Fund Act, and Industrial Disputes Act, for such category of labour are not implemented effectively.[22]

Bonded Labour is prohibited in India by the Bonded Labour System (Abolition) Act, 1976 and by Articles 21 and 23 of the Constitution. After the commencement of the Bonded Labour System (Abolition) Act, 1976, the bonded labourers stand freed and discharged from any obligation to render to bonded labour. This Act provided that, if there is any agreement or instrument or custom which requires such bonded labour, it shall stand inoperative after the commencement of the Act. Any liability to repay bonded debt shall stand extinguished.[23] Therefore, the Act frees all bonded labourers, cancels any outstanding debts against them, prohibits the creation of any new bondage agreements and orders the State to economically rehabilitate freed bonded labourers.

Despite the statutory prohibition, bonded labour is widely practiced. In many cases, bonded labour have been liberated and set free in accordance with the law and given cash and transport expenses to go their native places. But as the characteristics of migrant labour, they again drift towards the old places of work and take employment as there is no gainful employment at their native places. In this aspect, the significant legislation of bonded labour did not protect the bonded migrant labourers and failed to prevent their exploitation. The Compact Committee therefore, 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 the contractors, Sardars or Khatadars. The recommendations of the Compact Committee were examined in consultation with the State Government 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.[24]

LAW ON INTER-STATE MIGRANTS

The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, was enacted in recognition of the exploitation of labourers by contractors who recruit labour for work outside the State by paying poor wages and engaging labour under extremely difficult work conditions. This Act is applicable to any establishment or contractors, which hires five or more inter-state migrant workers.[25] The term "workmen" would mean workers employed to engage in skill, semi-skill, unskilled, manual, supervisory, technical or clerical work (does not include persons involved in administrative or managerial work/ or draws a salary of more than five hundred rupees per month).[26] The act provides for equality on the basis of payment of wages, wage

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22 Id, p.7.

23 Section 6, Bonded Labour System (Abolition) Act, 1976

24 Office of the Chief Labour Commissioner(Central), Government of India, available at: <http://clc.gov.in/clc/clcold/Acts/shtm/ismw.php> last accessed: 2nd Nov., 2017.

25 S.1(4), Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979.

26 S.2(1)(j), Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979.

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rates, holidays, hours of work, and other conditions of service which are non-discriminatory towards inter-state migrant workers.[27] Wages paid to the inter-state workmen should comply with the minimum wages legislation and shall be payable only in cash.[28] This act also provides for displacement allowance[29] and journey allowance.[30] Overall, the contractor has the primary responsibility for registering the worker, issuance of passbooks, regular payment of wages, equal remuneration to men and women, ensure suitable conditions for work, provide suitable residential arrangement, provide medical facility, provide clothing, in case of serious injury to the worker inform the next of kin and the state authorities.[31] The State government is empowered to make Rules for carrying out the purposes of this Act.[32]

DRAWBACKS OF THE INTER-STATE MIGRANT LAW

Restrictive Scope of Definition of Migrant Worker: This Act has been ineffective because of the lack of proper implementation as well as lack of awareness about labour rights among the workers regarding the existence of labour laws. The Act does not apply to all individual migrant Labour. It therefore, left a sizable number of migrant workers out of its purview by applying its provisions to every industrial establishment/contractor into which five or more migrant workmen are employed. According to the Act, the "Inter-State Migrant Workman" means 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. The Act recognizes only those workers who are recruited by or through a contractor as inter-state migrant worker. Workers migrating on his own and employed individually outside his own state or workers migrating without such contractors are not covered under the purview of the Act. In this aspect, this Act does not safeguard the interest of all migrant workmen who leave their state on his own in a much more distressed condition and take shelter of employer directly without such contractors in another state to earn their livelihood. Hence, the definition of Inter-State Migrant Workmen in the Act is discriminatory in terms of extending the benefits.

Hurdles in Enforcement: Very few contractors have been issued licenses as very few enterprises employing inter-state migrant workers have registered under the Act.[33] In addition, the record of prosecution and dispute settlement has been very weak. Migrant workers do not possess passbooks, prescribed by law, and which is the basic record of their identity and their transactions with the

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27 "Critical Assessment of Labour Laws, Policies and Practices through a Gender Lens", National Resource Centre for Women, available at: <http://www.shram.org/uploadFiles/20141204062826.pdf> last accessed: 2nd Nov., 2017.

28 Ibid.

29 S.14, Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979.

30 Id, S.15.

31 Id, S.12.

32 Id, S.35.

33 Supra 26.

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contractor and employers.[34] Moreover, the responsibility for enforcement of the provisions of the Act lies with the Central Government if it is the appropriate Government. Similarly, the responsibility of enforcement of the provisions of the Act lies with the Government of the host State in which the establishment is located along with the Government of the home state from where the workmen have been recruited. Generally, one State Government does not want to interfere in the jurisdiction of the other state where the enforcement responsibility lies with both the states. This is a serious hurdle for the effective enforcement of the Act.[35]

Disparity in Wages paid to Regular & Migrant Workers: On account of the highly diminished bargaining powers of migrant workers and their increased vulnerability towards exploitation, the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act of 1979 has specifically provided for the fixation of minimum wages at the rate laid down by the Minimum Wages Act of 1948.[36] The Act also provides that the wage rates and other conditions of service of an inter-state migrant workmen employed in an establishment shall be similar to those of the other workmen employed in the same establishment and performing the same or similar kind of work.[37] However, employers do not desist from discriminating regular and migrant workers when it comes to payment of wages. The employers continue to pay migrant workers at rates much lower than the minimum wages fixed by the appropriate authorities with no opposition from any quarters.[38] This is because the migrant workers do not complain for their remuneration is much higher than what they would receive in their native places for performing a similar quantum of work.

In the long-run, these workers toiling at reduced rates replace the native labourers as employers find it much easier to discriminate these unorganized sets of workers moving in from alien lands. Consequently, these workers are isolated from the native workers and the trade unions spearheaded by the natives for the collective welfare of workers.[39] Thus, with no individual or trade collective willing to oppose the discriminatory attitude of the employers, it continues unchecked. On account of these circumstances that hinder the operation of migrant worker welfare centric laws, it is imperative that the Government authorities appointed under this Act or other specially empowered authorities take proactive measures for the successful implementation of the provisions of the Act.

[34] "Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector", National Commission for Enterprises in the Unorganised Sector, Government of India, 2007 *cited in* "Critical Assessment of Labour Laws, Policies and Practices through a Gender Lens", National Resource Centre for Women, available at: <http://www.shram.org/uploadFiles/20141204062826.pdf> last accessed: 2nd Nov., 2017.

[35] Anubhav Pandey, "Laws related to Migrant Labourers in India", IPleaders, available at: <https://blog.ipleaders.in/laws-related-to-migrant-labourers-in-india/> last accessed: 31st Oct., 2017.

[36] Supra 28, S.13(1).

[37] Id, S. 13(1)(a).

[38] George Kurian & Anurag Bhamidipaty, "The Inter-State Migrant Workmen Act:Remedies for Resolving Drwabacks & Closing Implementation Gaps", International Journal of Research and Analysis, Vol. 1, Issue 2, 2013, p.153, available at: <http://www.ijra.in/uploads/41590.3809244907George%20Kurian%20&%20Anurag%20Bhamidipaty.pdf> last accessed: 1st Nov., 2017.

[39] Ibid.

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The inspectors appointed under Section 20 of the Inter State Migrant Workmen Act should assume a proactive role towards fulfilment of their duties that include examination of workplaces and registers maintained at such places, interviewing migrant workmen and performance of other acts by which the government can satisfy itself that the provisions of the Act are being complied to.

Encouraging Contracting System: The Act was designed to protect the workers against the evils of contracting system and also to eradicate the evils of contracting system. But the Act encourages 'Contracting System' by making the recruitment of inter-state migrant workmen, by or through a contractor under an agreement or other arrangement for employment. It is to be noted that the primary objective of the Contract Labour Act is 'abolition of contract labour' and it is regulating the working conditions of contract labour only wherever such employment is required. Therefore, contrary to this, the 'system of contract labour' remains intact in the migrant law even after passing a special legislation for its abolition. The Act permits to recruit inter-state migrant workmen through or by contractor for employment under an agreement or other arrangement. The Act state that recruitment by or through contractor may be made with or without knowledge of the principal employer. Therefore, this Act does not bring contractors and migrant workers directly under the principal employer. Apart from this, migrant workers are almost always as a rule, engaged through contractors.

In such cases, there is no direct relationship between migrant workers and the principal employer. In the absence of direct relationship between the employer and employee, the migrant workers can only seek assistance through the contractors. Thus, the migrant workers don't always enjoy formal employer-employee relationship in their workplace. As a result of this, the principal employers do not consider the migrant workers as their workers as they are recruited and brought by contractors. It looks anomalous that migrant workers can receive the limited benefits of the existing labour laws only if there is an Employer -Employee relationship. If worker changes workplace in after entering host state: Many migrant workers who enter the host state through the contractor may leave the principal employer or may change the principal employer or workplace. An inter–state migrant workman who is recruited by or through a contractor under an agreement, switches his work to another employer is not entitled to the protection admissible under the Act.

No Security of Employment: The important feature of migrant worker is lack of continuity or stability in employment. There is no provision in this protective legislation to provide security for employment. In the absence of security for employment, migration of workers is likely to persist with all its attendant consequences.

No provision regarding not working with unlicensed contractor: The Act in its provision state that no contractor shall recruit or employed migrant workmen except valid license. But there is no corresponding provision regarding the obligation of the principal employer to not get work done through an unlicensed contractor. In fact, there is no provision in the Act specifying the duties and obligations of principal employers. The liabilities of the principal employer are also not specifically specified. The Act does not hold the contractor responsible for any breach of the provisions of the Act because there is no provision in this Act specifying the liabilities of the contractor (or) making the contractor liable for any breach of the Act. The Act is even silent

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regarding the penalties to the inspectors who do not perform or exercise their duties diligently for the effective implementation of the Act.

INTER STATE MIGRANTS AND OTHER LABOUR LAWS

The vast majority of migrant workers fall in the unorganized sector. India has many labour laws in statute books. All the labour laws do not cover workers engaged in unorganized sector. There are labour laws that apply wholly or partly to this sector.[40] Apart from the Inter–State Migrant Law the provisions of various labour laws like Employees Compensation Act, Payment of Wages Act, Industrial Disputes Act, Employees State Insurance Act, Trade Union Act, Employees Provident Fund Act and Maternity Benefit Act are also applicable to migrant workers. The Enactments specified in Schedule of the Inter-State Migrant Workmen Act, 1979 are:

1. The Employees Compensation Act, 1923.
2. The Payment of Wages Act, 1936.
3. The Industrial Disputes Act, 1947.
4. The Employees State Insurance Act, 1948.
5. The Employees Provident Funds and Miscellaneous Provisions Act, 1952.
6. The Maternity Benefit Act, 1961.

Section 21 of the Inter-State Migrant Workmen Act simply states that the inter-state migrant workmen shall be deemed to be employed and actually worked in the establishment or as the case may be, the first establishment in connection with work which they are doing from the date of their recruitment for the purposes of the enactments specified in the schedule appended to the Act. It is pertinent to note that the date of recruitment and the date of employment in any establishment where they are made available by the contractors may be different. However, this section provides that the date of recruitment shall be deemed to be the date of employment for certain labour enactments so that the inter-state migrant workers may be entitled to the benefits of the provisions of the enactments specified in the schedule of the Act.

Employees Compensation Act 1923 is one of the earliest pieces of labour legislation. This law applies to the unorganized sectors and to those in the organized sector who are not covered by the Employees State Insurance Scheme, which is conceptually considered to be superior to the Employees Compensation Act 1923. This Act provides compensation for an accident arising out of and in the course of employment. This laudable legislation has been circumscribed by severe limitations in the case of inter-state migrant workmen. The Inter-State Migrant Workmen Act puts an obligation upon the contractor to report the concerned authority of both the state and next of the kin of the migrant workmen in case of fatal accident or serious injury to any such workmen. The inherent philosophy is that an untoward event resulting in death or serious bodily injury does not go unnoticed or unreported.

40 "Report of the Second National Commission on Labour", Government of India, 2002, p.312 *cited in* Gurdeep Singh, "Migrant Workmen and the Law: Identification, Motivation, Legal Awareness, Wages and Welfare Measures, Social Security", Deep and Deep Publications, New Delhi, 2002, p.5.

There are certain hurdles to the inter-state migrant workmen in claiming compensation from the commissioner. Language barrier is a major hurdle. The inter-state migrant workers do not know the language of the state to which they are recruited for employment. They are not sons of the host state. They are totally unfamiliar with the court language and procedures.[41] Generally, in practice, accidents causing fatal or serious bodily injury are neither reported to the concerned authorities nor to the next kin of the migrant workmen as required by the Inter-State Migrant Law.[42] It could be intimated to the dependants of the deceased workman only by the co-workers. The difficulty of filing the claim petition by the concerned dependants of the deceased workman is addressed by Section 21 (1) (b) which clearly provides that the claim petition may be filed by the claimant where the claimant ordinarily resides. The provision has a very laudable object; otherwise, it could cause hardship to the claimant to claim compensation under the Act.

Wage regulation and Wage determination in India has been achieved by various instruments. The instruments are the Payment of Wages Act, 1936 and the Minimum Wages Act, 1948. In order to carry out the objectives of wages legislation, the Inter- State Migrant Workmen Act impose a duty on every contractor to specify the proposed rates of wages, modes of payment of wages and deductions made from the wages in the passbook issued to the migrant workmen. The Inter- State Migrant Act ensure regular payment wages, equal pay for equal work irrespective of sex and wages payable to the migrant should be paid in cash. The Act further state that the contractor should be responsible for payment of wages and the same should be made in the presence of authorized representative of the principal employer. When the contractor fails to make payment of wages then the principal employer is liable to make payment of the wages. The above all to the migrant workmen is laid down in accordance with the Payment of Wages Act, Minimum Wages Act and Equal Remuneration Act. The Inter- State Migrant Act states that migrant workmen should in no case be paid less than the wages fixed under the Minimum Wages Act, 1948.

Industrial Disputes Act 1947 is an Act for the investigation and settlement of Industrial Disputes. The Inter- State Migrant Workmen Act consist a provision regarding industrial disputes in relation to inter-state migrant workmen.[43] An inter-state migrant workmen can raise an industrial dispute to the appropriate authorities of the appropriate government either in the host state wherein the establishment is situated or in the home state wherein the recruitment was made. The inter-state migrant workmen can make the application in the home state only on the ground that he has returned to home state after the completion of his employment. The application must be made within a period of 6 months from the date of his return to the state wherein the recruitment was made. In such circumstances, the concurrence of the Government of the State wherein the establishment concerned is situated is essential. The dispute or difference may be in connection with employment or non–employment or the terms of employment or the conditions of labour of

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41 “Critical Assessment of Labour Laws, Policies and Practices through a Gender Lens”, National Resource Centre for Women, available at: <http://www.shram.org/uploadFiles/20141204062826.pdf> last accessed: 2nd Nov., 2017.
42 Ibid.

42 Ibid

43 S.22, Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979.

an Inter- State Migrant Workman. It is clear from the above that an inter–state migrant workmen can invoke the relevant provisions of the Industrial Disputes Act or can approach any authorities specified therein with the help of Section 22 of the Inter–State Migrant Workmen Act in respect of an industrial dispute.

Employees Provident Funds Act, 1952 provides certain retirement benefits, which is steadily being extended to sectors of the unorganized sector, especially where the employer is clearly identifiable. This Act provides for the institution of Provident Funds, Pension Fund and Deposit Linked Insurance Fund for employees in factories and other establishments. The Act applies to every establishment which is a factory engaged in any industry specified in Schedule 1 of the Act and in which twenty or more persons are employed and to any other establishment employing twenty or more persons or class of such establishments which the Central Government may by notification in the official Gazette specify in this behalf. The expression 'employee' under this Act includes any person employed by or through a contractor in or in connection with the work of the establishment. The inter–state migrant workmen, may get benefits and protection of the Provident Fund Act from the date of recruitment.

The Employees State Insurance Act, 1948 provides for certain benefits to employees in case of sickness, maternity and employment injury. This Act applies to all factories including government factories but it does not apply to the employees who are employed in seasonal factories. 'Employee' for the purposes of this Act means any person employed for wages in or in connection with the work of a factory or an establishment to which this Act applies. The appropriate Government may extend the provisions of this Act or any of them to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise. Employee who is directly employed by the principal employer or who is employed by or through an immediate employer or whose services are temporarily lent or let on hire to the principal employer by the person with whom the person whose services are so lent or let on hire has entered into a contract of service is covered under the Act. An inter–state Migrant workman comes under the purview of this Act from the date of recruitment. Hence, an inter-state migrant workman from the date of recruitment may entitle the benefits of the Employees State Insurance Act.

The Maternity Benefit Act, 1961 is the most important enactment dealing with the women working in factories, mines, plantations and other industrial establishments. The Act has been passed to regulate the employment of women in certain establishments for certain periods before and after child-birth and to provide for maternity benefit and certain other benefits. 'Woman' under this means a woman employed whether directly or through any agency, for wages in any establishment. However, a woman worker is entitled to claim maternity benefit only whom she has actually worked 80 days in the twelve months immediately preceding the date of her expected delivery in an establishment of the employer from whom she claims maternity benefit. An Inter- State female migrant worker may enjoy the benefits provided in the Maternity Benefit Act, 1961 from the date of recruitment. This Act is applicable to notified establishments. Its coverage can therefore extend to the unorganized sector also, though in practice it is rare.

JUDICIAL RESPONSE TO MIGRANT WORKERS

The Indian Judiciary is an arm of social revolution. Judiciary is the apex authority in upholding the equality. It is established fact that judiciary is the third organ of the Government in any democracy. Judiciary is the guardian of the Fundamental Rights of the people. Truly, the Supreme Court of India has been called upon to safeguard the rights of the people and play the role of guardian of the social revolution.[44] It is the great tribunal, which has to draw the line between individual liberty and social control. When labour laws are not enforced by relevant authorities, appellate judiciary has to ensure modicum implementation. The Judiciary in India recognized several rights of workers in unorganized sector by its various judicial decisions. Judiciary has also shown serious concern on the appalling conditions of Inter – State Migrant Workmen, a category of unorganized sector.

People's Union for Democratic Rights v. Union of India[45] (ASIAD case) arose out of the denial of minimum wages, to workmen engaged in various ASIAD project and non-enforcement of various Labour Laws. The court held that the rights and benefits conferred on the workmen employed by a contractor under the provisions of the contract labour (Regulation and Abolition) Act, 1979 and the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 clearly intended to ensure basic human dignity to the workmen and if the workmen are deprived of any of these rights and benefits to which they are entitled under the provisions of these two pieces of social welfare legislation, that would clearly be a violation of Article 21 of the Constitution. It was also held that non-payment of minimum wage to the workers engaged in construction work would amount to not only violation of minimum Wages Act, but also Article 23 of the Constitution, which intends to prevent forced labour and begging.

Salal Project case[46] is one of those cases by way of public interest litigation where positive results have been achieved for the benefit of the workmen employed on the Salal Hydro Electric Project as a result of judicial intervention. The Court observed that under Section 20(3) of the ISMW Act provides that the officers of the originating state can make enquiries in the recipient state provided the recipient state grant permission to the originating state. This was corning in the way of proper implementation of the Act. To overcome this problem, the Supreme Court observed: This is a beneficial legislation for satisfying the provisions of the Constitution and the obligation in international agreements to which India is a party and passed the order that "every State/Union Territory in India shall be obliged to permit officers of the originating state of migrant labour for holding proper inquiries within the limits of the recipient state for enforcement of the Act and no recipient state shall place any embargo or hindrance in such process. In this case, the court added that if there are any advances repayable by the workmen to the khatedars they may be paid by the workmen to khatedars after they receive the full amount of wages due to them. But on no account

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44 Austin,G. "The Indian Constitution: Cornerstone of a Nation", p.169, cited in J. N. Pandey, "Constitutional Law of India", Central Law Agency, Allahabad, 2002, p.421.

45 AIR 1982 SC 1473.

46 *Salal Hydro Electric Project v. State of Jammu and Kashmir,* (1983) 3 SCC 538.

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can any deduction be made from such wages and they must be paid to the workmen directly without the intervention of any middleman.

Faridabad Stone Quarries Case[47](Bandhua Mukti Morcha case) involved a survey of some stone quarries in Faridabad district of Haryana State wherein it was found that there were a large number of migrant labourers from various states who were working in these stone quarries under inhuman and intolerable conditions and many of whom were bonded labourers. The most serious one was the loss of valuable lives due to tuberculosis on an account of stone dust pollution. There was illegal system of Thekedars i.e., middle men who extracted poor miner's wages as their ill- gotten commission. A broad connotation to the definition of contractor was given in this case. It was held that if there is any agreement or understanding between the Jamadar, Thekedar on the one hand and the owner of the stone crushers on the other, that the Jamadar or Thekedar will ensure a certain rate of output of stone to be fed to the stone crusher the Jamadar or the Thekedar would be the 'contractor.'

Thus, by being a 'contractor' under S. 2(1)(b) of the Act, the workmen recruited by or through him from other states for employment in the stone quarries and stone crushers in the State of Haryana would undoubtedly be inter-state migrant workman. The Court further observed that the obligation to give effect to the provisions contained in these various laws is not only that of the Jamadar or Thekedar and the mine-lessees and stone crushers owners (provided of course there are 5 or more inter-State Migrant Workmen employed in the establishment) but also that of the Central Government because the Central Government being the "appropriate Government" within the meaning of Section 2(1)(a) is under an obligation to take necessary steps for the purpose of securing compliance with these provisions by the Thekedar or Jamadar and mine-lessees and owners of stone crushers.

The ASIAD case and the Faridabad stone quarries case are an eye-opener of the grim reality of the tragic situation involved in migration of scores of workers employed in brick kilns, stone quarries, building and construction Industry. It comes as a breath of fresh air, as a beacon light, a guiding star for Government, the enforcement agency, the planners, administrator and the social activists and provides a ray of hope for the deprived and distressed, the illiterate and the expression less. The Judiciary has therefore, taken an extremely serious note of the exploitation of the migrant workers on one hand and non-observance of various labour laws on the other hand. It is important to mention here that there is hardly any case where the affected migrant workmen have approached the Judiciary for redressing their grievances against the delinquent employer, contractor and authorities. It seems that the migrant workers are not capable of taking advantages of the various labour laws through the judiciary because of their lower strata in the society and their miserable plight in the country.

CONCLUSION

It was in pursuance of the socialist welfare objective that the Indian Parliament framed a law relating to the migrant workmen who otherwise would be excluded from the welfare mechanism

47 *Bandhua Mukti Morcha v. Union of India,* AIR 1984 SC 802.

of the government and thus deprived of the fundamental right of equality before law and equal opportunities for growth. The proper framing and implementation of labour laws inclusive of laws relating migrant workers is sine qua non for a vibrant India with equal opportunities for growth for all. The interstate migration phenomenon is a natural consequence of supply and demand forces operating in the labour market. It undoubtedly contributes to the growth of the economy of sender as well as receiver states and therefore it is necessary that the government take efficacious measures to address the challenges that arise due to migration of laborers. It is true that there exist, many national as well as state legislations which seek to address the problems faced by the migrant workers. However many of them are obsolete pieces of legislation as they suffer from gaps in the implementation part. Unless these deficiencies are taken care of, some of which have been elaborated in this paper, the problems of the migrants will remain unresolved, and in the long run, the productivity of migrant labour shall decline.