

LAWS GOVERNING INTER-STATE LABOUR MIGRATION IN INDIA : A CRITICAL ANALYSIS

MS. SAYANTANI BAGCHI¹

INTRODUCTION

“Do you want your hand or leg to be cut off” asked the infuriated contractor.

“We are too poor to pay the money to you immediately. We will work for you instead. Please let us go.” answered a choked and terrified voice.

These lines depict the horrific tale of two migrant workmen from Kalahandi, Odisha whose right hands were mercilessly severed by labour contractors². The two captive workmen drew the wrath of the contractors when they objected to be taken to a distant land for work and couldn't repay the advance demanded by the inebriated labour contractors. With the blink of an eye, their right hands were dismembered. Life never remained the same for these unfortunate men.

The unorganised informal labour market in India is a storehouse of unskilled and impoverished masses of people migrating from one place to the other (principally from rural to urban areas) in search of work either seasonally or permanently. Migration in India is triggered by widespread societal and economic disparities. It is an outcome of economic immobility of an area due to which people are compelled by existing circumstances to leave their domiciles and migrate to places in search of livelihood. Heavy debt burden, displacement, natural calamities, unfavourable agricultural conditions, seasonal employment, low land holdings, dearth of work at the place of origin, marriage among women constitute prominent push factors

¹ Ms. Sayantani Bagchi, Assistant Professor, National Law University, Jodhpur, Pursuing PhD Scholar (WBNUJS).

² In Re Chopping of Palms of Two Migrants 2015 (12) SCALE 569.

that induce people to migrate from the place of origin. On the other hand, rapid urbanisation and commercial development constitute the pull factors drawing large masses of labour force to the developing zones. Networks of middlemen play a pivotal role in the entire process of transmitting labourers from one place to another. Contractors and sub-contractors ferry workmen from areas of origin to the places of employment by paying them advances inclusive of certain basic expenses. The process of employment is habitually detrimental to the workmen's interest and in clear contravention of legal mandates. Left with no option to eke out a living, the destitute impulsively grab this alluring opportunity.

The key establishments which absorb migrant labour on a large scale include construction works, domestic work, textile industries, brick-kilns, transportation, mines and quarries and agriculture³. The migrant workers employed in all these establishments are assigned works that entail disproportionate hard work that subject them to higher degree of risk and unsavoury working conditions. This is in fact a lucrative alternative for the employers who choose to employ migrants over locals in lieu of cheap labour. Owing to illiteracy, acute poverty and linguistic barriers, migrants are armed with least bargaining capacity. Migration is a fundamental right that every citizen is constitutionally armed with. However, when migration leads to exploitation and barbarism prejudicing basic rights, human dignity and liberty, it assumes an objectionable character. A fundamental problem with migrant labour is the lack of precise statistical information. According to the Census of 2011, 45 Crore persons have changed their residence within the country⁴ but the exact number of migrants cannot be ascertained and further recorded owing to the frequent change of work (seasonal migration). A major chunk of the migrant labour belongs to the backward classes or tribal communities from remote areas and are highly vulnerable and prone to exploitation. Reported cases reveal a sordid picture of the conditions in which migrant labourers survive. Laws and regulations have failed miserably with severe compromise of living and working conditions.

³ P. Deshingkar and S. Akter, *Migration and Human Development in India* (Research Paper 2009/13 United Nations Development Program 2009) 6-10 <http://hdr.undp.org/sites/default/files/hdrp_2009_13.pdf > accessed 5 April 2018.

⁴ Government of India, Annual Report 2017-2018 (Ministry of Labour and Employment, Government of India) <https://labour.gov.in/sites/default/files/ANNUAL_REPORT_2017-18-ENGLISH.pdf > accessed 25 April 2018; Krishnavatar Sharma, 'India has 139 million internal migrants. They must not be forgotten' World Economic Forum (1 October 2017) < <https://www.weforum.org/agenda/2017/10/india-has-139-million-internal-migrants-we-must-not-forget-them/> > accessed 24 May 2018.

The law regulating the procedure and conditions of work of inter-state migrant labour in India is the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979. The backdrop of this legislation suggests that it emanated out of a compelling commitment to protect the inter-state workmen who have been perpetually subject to excruciating circumstances. The law intends to safeguard the migrant workmen against severe exploitation in the hands of the unscrupulous contractors by laying down in clear terms the rules to be followed while employing inter-state migrant labour and measures to defend their interests. But the aberrant contravention of this legislation and its poor implementation mechanism questions its very existence. The limited reach of this legislation only to inter-state migrant workmen neglecting the pervasive incidence of intra-state labour migration which has similar features as that of inter-state labour migration indicates the inattention of the legislators towards concerns that call for immediate intervention.

This research article studies the legislative framework governing inter-state labour migration from a critical standpoint. Whether the desired objectives of the law in the context of rampant labour migration have been achieved and the extent thereof will be subject to analysis. The trajectory of this article is as follows. The initial segment outlines the legal process of recruiting inter-state migrant labour and the role played by various statutory functionaries under Act. The legal responsibilities of these functionaries will be discussed in brief. This will be followed by a discussion on the inherent lacuna in the formulation and implementation of the law. Thereafter, the judicial approach in safeguarding the rights of the migrant workers and the feasibility thereof shall be analysed.

BROADER LEGISLATIVE FRAMEWORK

The first piece of legislation specifically addressing the perils of the migrant workmen namely the Odisha Dadan Labour (Control and Regulation) Act, 1975, was enacted in the backdrop of the exploitative system of *Dadan* prevalent in the state of Odisha. Under this system, labour contractors called *Sardars* and *Khatadars* often resorted to immoral ways of alluring innocent workmen towards inhuman living and working conditions⁵. Even before the Act of 1975, the Contract Labour (Regulation and Abolition) Act,

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

1970 applied to all contract labourers and not specifically the migrant labourers. In 1976, as a result of the Conference of the Labour Ministers, the question of protecting the interests of the Dadan labour came up for consideration as a Central issue. A Compact Committee was established to delve into the point at issue and come up with a list of suggestions. The Committee sensed the ineffectiveness of the Contract Labour (Regulation and Abolition) Act, 1970 and other allied legislations like Minimum Wages Act, 1948. The recommendations of the Committee were duly considered while making of the Inter-State Migrant Workmen Act (hereinafter referred to as ISMWA) in 1979. The Odisha Act was expressly repealed by the Act of 1979⁶. Besides the ISMWA, the Constitution of India, vide Article 23 (prohibiting trafficking in human being, begging and other forms of forced labour), Article 42 (State's obligation to provide and secure just and humane conditions of work and maternity relief). The Indian Penal Code, 1860 imposes criminal liability on people unlawfully compels a person against his will (Section 374). A number of other labour legislations dealing with Industrial disputes, payment of wages, insurance also apply to the migrant workmen. The ISMWA of 1979 along with its Central Rules made in 1980 governs the employment and conditions of service of the inter-state migrants recruited through labour contractors. Let us first take a glance at the legal course that should essentially govern the processes of recruitment and employment of inter-state migrant workmen.

LEGAL IMPERATIVES FOR THE RECRUITMENT AND EMPLOYMENT OF INTER-STATE MIGRANT WORKMEN

The ISMWA applies *“to every establishment in which five or more inter-State migrant workmen (whether or not in addition to other workmen) are employed or who were employed on any day of the preceding twelve months; (b) to every contractor who employs or who employed five or more inter-State migrant workmen (whether or not in addition to other workmen) on any day of the preceding twelve months”*.⁷ The Act does not specifically enumerate the steps in the process of recruiting inter-state migrant workmen which is left to be gathered from the provisions of the ISMWA and the rules made under it. The rules elaborate the existing provisions of the Act.

⁶ *ibid* s 36.

⁷ *ibid*, short title, commencement and application.

The ISMWA defines 'Inter-State Migrant Workman' as "*a person 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.*"

This definition as well as the Act places a Contractor⁸ who recruits or through whom the recruitment⁹ is made at a cardinal position. The recruitment should be made in one State for the purposes of employment in another State. This requires the existence of an agreement or other arrangement. The employment must be in another State under a Principal Employer. The contractor can either be an independent contractor, an agent, employee or otherwise and includes a sub-contractor, *Khatadar*, *Sardar*, agent or any other person.

However, a contractor can recruit a person provided he obtains a license to that effect. In this procedure of double licensing, firstly license for recruiting migrant workmen is to be obtained from the appropriate government having jurisdiction over the area *wherein the recruitment is made* and also from the appropriate government having jurisdiction in relation to the area *wherein the establishment is situated*. The license must be issued subject to certain mandatory conditions namely its non-transferability, terms and conditions of recruitment, wage rates, special provisions with regard to female migrant workers, period of validity of the license etc.

The licensing officer has certain discretionary powers with respect to granting of licenses. Firstly, he may impose certain additional conditions on the license granted especially with regard to terms and conditions of the agreement, remuneration payable, hours of work, essential amenities. Secondly, he may require the applicant to furnish security for performing the conditions in the license. Thirdly, he may make an investigation with respect to the application for license. Fourthly, subject to his satisfaction, the licensing officer may revoke, suspend and amend the license if he is

⁸ *ibid*, s 2(1) (b): "contractor", in relation to an establishment, means a person who undertakes (whether as an independent contractor, agent, employee or otherwise) to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, by the employment of workmen or to supply workmen to the establishment, and includes a sub-contractor, *Khatadar*, *Sardar*, agent or any other person, by whatever name called, who recruits or employs workmen.

⁹ *ibid*, s 2 (1) (h) "recruitment" includes entering into any agreement or other arrangement for recruitment and all its grammatical variations and cognate expressions shall be construed accordingly.

satisfied that the license has been obtained through unlawful means¹⁰. He may also forfeit the security (if any) furnished at the time of grant of license.

The above requirements aim at ensuring safety and security to the migrant workmen by ensuring transparency in the process of recruitment. The recorded data may prove to be of immensely help in detecting migrants who become untraceable after their journey to distant lands. Sometimes, the reason may extend to trafficking or death as well. The powers of issuing conditional license, investigating applications, revocation, suspension or amendment of the licenses, forfeiture of security vested on the Licensing Officer makes him a powerful tool in protecting the rights of migrant labour who are often subject to tremendous oppression at the time of recruitment.

The responsibilities of a contractor extend beyond mere recruitment. The cardinal position held by him requires him to discharge a plethora of duties¹¹ towards the workmen recruited by him. Every contractor must furnish particulars of the workmen to specified authorities¹², pay a non-refundable displacement allowance¹³ and journey allowance¹⁴ to every workman, pay return fare to the workmen when his employment period expires or is terminated or owing to his illness, furnish a pass book to every migrant workman with essential details¹⁵, ensure regular and equal payment of wages to the workmen without any discrimination, ensure suitable conditions of work which includes protective clothing¹⁶, first aid

¹⁰ Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Central Rules, 1980, r 10.

¹¹ ISMWA, ch IV.

¹² Rules (n 9) r 21.

¹³ ISMWA, s 14.

¹⁴ *ibid*, s 15.

¹⁵ *ibid* s 12 (1) (b).

¹⁶ Rules (n 9) r 38.

facilities, crèche facilities¹⁷, rest rooms¹⁸, latrines and urinals¹⁹, canteen²⁰ etc., maintain residential accommodation, provide medical facilities free of charge²¹, inform appropriate authorities or the next kin of a workman who has sustained fatal accident or serious bodily injuries immediately²².

The stage of recruitment is followed by the stage of employment in an establishment. At this stage, it is the Principal employer²³, who plays the pivotal role. The foremost responsibility of an employer who intends to employ inter-state migrant workmen in his establishment is to get his establishment registered by obtaining a Certificate of Registration²⁴. The responsibilities of the employer mostly come to light when the contractor is unsuccessful in discharging his responsibilities towards the workmen recruited by him²⁵. For instance when the contractor fails to pay displacement or journey allowances or fails to fulfil the fundamental duties envisaged in the Act, the employer is called upon to step into his shoes²⁶. Once the duties are discharged, the employer is entitled to recover his entitlements from the contractor²⁷. In connection with the establishment, the employer is bound to maintain, update and preserve registers

¹⁷ *ibid*, r 44.

¹⁸ *ibid*, r 40.

¹⁹ *ibid*, r 42.

²⁰ *ibid*, r 41.

²¹ *ibid*, r 37.

²² *ibid*, r 23(2).

²³ ISMWA, s 2 (1) (g) -"principal employer" means,— (i) in relation to any office or department of the Government or a local authority, the head of that office, department or authority or such other officer as the Government or the local authority, as the case may be, may specify in this behalf; (ii) in relation to a factory, the owner or occupier of the factory and where a person has been named as the manager of the factory under the Factories Act 1948 (63 of 1948), the person so named; (iii) in relation to a mine, the owner or agent of the mine and where a person has been named as the manager of the mine, the person so named; (iv) in relation to any other establishment, any person responsible for the supervision and control of the establishment.

²⁴ *ibid*, s 6.

²⁵ Rules (n 9) r 46.

²⁶ ISMWA, s 18 (1).

²⁷ *ibid*, s 18 (2).

specifically displaying the names and addresses of the contractor along with the details of workmen recruited by him²⁸.

MONITORING MECHANISM AND GRIEVANCE REDRESSAL

The task of monitoring the implementation of the Act rests on Inspectors appointed by the appropriate Governments. For this purpose, they are empowered to enter into premises, examine registers and records, examine persons for determining whether they are inter-state workmen or not etc.²⁹ Cognizance under the Act may be taken by a Court of at least Metropolitan Magistrate or Judicial Magistrate of the First Class only when a complaint is made by an Inspector or with his sanction.³⁰ By virtue of Section 22, the Industrial Disputes Act, 1947 has been made applicable to situations of dispute or differences in connection with the employment or non-employment or the terms of employment or the conditions of labour of an inter-state migrant workmen. Provisions for legal aid to a migrant workman on the basis of a written application made by him or his kin (in the event of his death) wanting aid in legal proceedings under certain laws (subject to the satisfaction of the authorities) have also been embodied in the legislative framework³¹. Persons contravening provisions of the Act or rules or any condition incorporated in the license shall attract liability in the form of either imprisonment for a term which may extend to one year or fine which may extend to one thousand rupees or both and if the violation continues, the liability would be rupees one hundred every day.

THE INTER-STATE MIGRANT WORKMEN ACT: A CRITICAL ANALYSIS

The Legislature, taking note of the atrocities against migrant labour, has addressed the issue by enacting the ISMWA, a beneficial legislation intended to shield the migrant workmen against the perils involved in the process of migration. Nevertheless, achieving the righteous objectives with which the law was enacted has remained a trance. Precisely, this

²⁸ Rules (n 9) 53.

²⁹ ISMWA, s 20.

³⁰ *ibid*, s 28.

³¹ Rules (n 9) r 58.

endeavour has turned out to be a blind alley. The shortcomings are manifested in its provisions which evidently suggest that our Legislature has failed miserably when it comes to conducting effective research before the final enactment of a law. Another major limitation and the most damaging one is its implementation, a process that is vitiated by stakeholders encircling the Labour Departments, the Police and the Middlemen. Through the following points, the author proposes to substantiate the above contentions.

a. Narrow applicability

The paramount requirements for the applicability of the Act are twofold. The workmen must be inter-state migrant workmen and that he must be recruited through contractors or intermediaries. Two fundamental matters have been overlooked in this regard. Firstly a large chunk of migrant workmen in India are intra-state migrant workmen i.e. they migrate within the State, especially within areas which are under-developed to those which are comparatively developed. The miseries that these intra-state migrants are exposed to are more or less at par with that of the inter-state migrants. Despite there being a law governing them i.e. the Contract Labour (Regulation and Abolition) Act 1970, the problems faced by them are perennial and have not been dealt with specifically. No special mechanism that caters to their specific interests³² exists and they are treated at par with other local workmen recruited through labour contractors. Secondly, the Act applies to workmen who are recruited through contractors. The Contractor is an entity which is omnipresent across the length and breadth of the Act. The role of the Principal Employer sets into motion when the contractor fails to perform his statutory duties. Besides employment through labour contractors, a considerable mass of the migrants come either through their relatives or close contacts. Despite them being migrant workmen, the provisions of this law are not enforceable against him. An effort in this regard was made by the Union Ministry of Labour and Employment which was examining suggestions from Bihar, Jharkhand and West Bengal to expand the ambit of the Act to workers who are recruited in the establishments without a

³² Linguistic barriers, ethnic discrimination, lower wage rates, housing, medical facilities, poor conditions of work. Situations aggravate in case of seasonal migrant workers.

labour contractor or the ones who migrate within the boundaries of a State³³. No more notable developments have surfaced in the recent years.

With reference to Art.14 of our constitution and the doctrine of new equal protection, the jurisprudence which has developed states that any piece of legislation has to be inherently equitable not only comparatively but also in substance. Under the principles of under-inclusion the State is required to make equitable classifications which do not exclude any group who face similar problems which were intended to be remedied by such classification³⁴. Under the *new equal protection doctrine*, the *principle of intelligible differentia* was developed to check the validity of the classification. The principle states that for a valid classification, two criteria have to be met i.e. the basis of classification must be real or there must be a real distinction between the two groups and there must be a reasonable nexus between the classification and the object sought to be achieved through such classification.

b. No limit on number of migrants recruited

There is no specific limit on the number of workmen that a contractor may recruit. However, it may be gathered from Rule 12 of the ISMWR, 1980 which talks about the fees to be charged for recruiting migrants above 400 the fees required is Rs.400, that there is no limitation on the number of workmen a contractor may recruit. This procedural edge allows the unscrupulous contractors to convey countless helpless migrants across state boundaries. This recklessness of the State labour departments in registering establishments or complying with the statutory mandate of investigation before issuing licenses adds fuel to this malpractice³⁵. Contractors seldom register the details of the migrants with the

³³ Suthirto Patranobis, 'States seek Amendment in Migrant Workmen Act' *Hindustan Times* (9 January 2007) <<https://www.hindustantimes.com/india/states-seek-amendment-in-migrant-workmen-act/story-oxqNe9sbYA6cvs0MjGHUpL.html>> accessed 21 May 2018.

³⁴ Udai Raj rai, *Fundamental Rights and their Enforcement* (PHI Learning Pvt. Ltd. 2011) 543-548.

³⁵ Staff Reporter, 'Moving Tale of Sweat and Blood far from home' *The Hindu* (7 July 2008) <<http://www.thehindu.com/todays-paper/tp-national/tp-tamilnadu/Moving-tale-of-sweat-and-blood-far-from-home/article15256164.ece>> accessed 21 May 2018.

administration or obtain license³⁶. As a result of this, a large number of workmen are illegally traded and trafficked across State boundaries and employed at overwhelmingly low wage rates and their basic rights are invaded blatantly at times leading to their death. One of the common outcomes of such practices is labour bondage. Despite laws combating bonded labour, the practice continues unhindered. The Global Slavery Index 2016 identifies that India has the maximum number of persons enslaved with an approximate of 18 Million³⁷ and a significant portion of them are migrant labourers.³⁸

c. Powers of Licensing Officer and Registering Officer

The sadistic cycle of exploitation that migrant labour undergo, escalating crimes against migrant workmen, striking observations made by the Judiciary in certain cases³⁹ establish the apathy of the Government in taking labour rights seriously. While the Act provides immunity to the licensing and registering officers against action taken in good faith⁴⁰, no liability is stipulated for mala fide actions. Powers of licensing officers that pertain to grant of licence, maintaining updated records of the migrants, conducting investigation before granting of licenses have immense potential if taken seriously.

d. Conditions of work

Requirements as to conditions of service such as establishment of housing quarters, canteens, crèches, hygienic urinals, rest rooms, free medical facilities is an absolute farce. It is not feasible in certain establishments

³⁶ Gokul Vannan, 'Madurai: Mystery surrounds death of 19-year-old Odisha girl' The Deccan Chronicle (Madurai, 21 October 2017) <<https://www.deccanchronicle.com/nation/crime/211017/madurai-mystery-surrounds-death-of-19-year-old-odisha-girl.html>> accessed 24 May 2018.

³⁷ Editorials, 'It's a national shame that bonded labour still exists in India' The Hindustan Times (5 November 2017) <<https://www.hindustantimes.com/editorials/it-s-a-national-shame-that-bonded-labour-still-exists-in-india/story-QtYienQn3RjxFoxdxAEI6M.html>> accessed 18 May 2018.

³⁸ The Global Slavery Index 2016 <<https://www.globalslaveryindex.org/country/india/>> accessed 18 May 2018.

³⁹ In Re Chopping of Palms of Two Migrants 2015 (12) SCALE 569; Labourers Working on Salal Hydro Electric Project v State of Jammu Kashmir [1984] 3 SCC 538

⁴⁰ ISMWA, s 32.

which absorb plenty of migrants including brick-kilns, construction sites, sugarcane harvesting or sugar mills etc to ensure adherence to these statutory requirements owing to the adverse factors involved⁴¹. Amidst abject poverty and distressing circumstances, these basic requirements are rigorously compromised. The poor helpless workmen have no liberty to bargain the terms of employment or ensure that their rights and entitlements are taken care of. Workers at brick-kilns live in small unventilated shacks near the brick kilns around three-four feet high while cooking is done outside the huts while workers in construction sites live in small tin or plastic shelters.⁴²

The statute requires the maintenance of health and hygiene and that medical facilities are provided free of charge to the migrants. Reports suggest that every year a number of migrants living in unhygienic environments are severely affected by vector-borne diseases especially during the monsoon. Workers in the brick-kilns and construction sites are affected mostly by tuberculosis, asthma, diarrhoea, skin diseases, chronic fever etc and also HIV. It is also seen that the migrants do not avail the medical and health facilities provided by the government periodically that include health camps or vaccination⁴³. Sometimes they disregard safe and secure working conditions prioritizing money.⁴⁴ An empirical survey conducted by the author at the brick-kilns of *Khurda* (Odisha) and habitats of migrant workmen in Cuttack reflected the following conditions of work⁴⁵:

- Migrants were mostly unskilled and agricultural labour
- The push factors included landlessness, heavy debt burden, caste based atrocities, marriage in case of women, acute poverty etc.

⁴¹ Feudal mindset, State inaction, Non-adherence to legal mandates, illiteracy and poverty of migrants.

⁴² Staff Reporter, 'Moving Tale of Sweat and Blood far from home' *The Hindu* (Tamil Nadu, 7 July 2008) <<http://www.thehindu.com/todays-paper/tp-national/tp-tamilnadu/Moving-tale-of-sweat-and-blood-far-from-home/article15256164.ece>> accessed 24 May 2018.

⁴³ S.V Nitha, 'Amend the inter-state migrant act, bring them under one roof' (24 April 2016) <<http://english.mathrubhumi.com/features/social-issues/amend-the-inter-state-migrant-act-bring-them-under-one-roof-english-news-1.1016073>> accessed 24 May 2018.

⁴⁴ *ibid.*

⁴⁵ Sayantani Bagchi, *Distress Labour Migration in Odisha: A Critical Study of the existing laws and policies* (ULL.M Dissertation presented to the National Law University, Odisha in 2016) ch VI.

- In some brick-kilns working hours extended from 6am to 12pm and 3pm till 10 pm.
- The entire family was involved in brick making process including the children who were employed without any consideration.
- Water supply is scanty with only one - two pumps in one brick-kiln.
- The Cuttack habitat depend upon the nearby river for water and sanitation which occasionally dries up during summers
- Open defecation is rampant at both the places
- Work is done under extreme sun and exposure to severe pollution.
- Workers are often injured in the construction process like loading and unloading bricks etc. with the contractors taking no action in this regard.
- Women are prone to sexual diseases and indiscriminate sexual abuse.
- Medical facilities are not provided by either employer or contractor.

e. Abysmally Low Wage rates

No uniformity is adopted when it comes to disbursement of wages. Sections 13, 16 and 17 of the ISMWA cast a mandatory duty on the contractor and the principal employer to ensure speedy payment of wages to every migrant workman. Besides the ISMWA, other laws like the Payment of Wages Act, 1936 whose application to inter-state migrant workmen has been extended by the ISMWA clearly requires that wages are paid in accordance with law and State policies and all deductions are made as per the clear legal mandate⁴⁶. However, the prevalent situation portrays a different picture. Every year, hundreds of workmen from the tribal belts of Gujarat and Maharashtra migrate to south Gujarat on a seasonal basis (mostly due to lack of cultivable land) to work in the sugarcane fields/sugar mills and face deplorable conditions of work with

⁴⁶ Payment of Wages Act 1936, ss 7 and 12.

tremendous exploitation.⁴⁷ Women and children face additional hardship owing to their vulnerability either in the form of physical, mental or sexual abuse⁴⁸. They are recruited through *Mukaddams* (former harvesters) with an advance upon which exorbitant interests are levied and the migrants remain in negative balance and therefore in perpetual debt.⁴⁹ States like Gujarat and Madhya Pradesh are the lowest wage payers in India blatantly flouting the legal standards where people work for 12-14 hours a day with wages of approximately Rs. 119/day⁵⁰.

f. Inadequate allowances

The law requires the contractor to pay a non-refundable displacement allowance of at least half the wage rate or rupees seventy-five, journey allowance and other allowances if any to a migrant workman.⁵¹ He is also duty bound to pay return fare up to the destination in case the workman ceases to be in employment due to reasons specified⁵². In many circumstances it is seen that migrants are carried to the destinations like herds of cattle, thrown into unreserved compartments, left to die without food 'one stacked upon the other like sacks of rice'⁵³. Abject poverty and distress leads them to the unknown.

⁴⁷ Anushka Rose, 'Sugarcane Harvesters In South Gujarat Are Trapped In Bondage, One Generation After Another' *Newsclick* (15 May 2018) <npublil<https://www.newsclick.in/sugarcane-harvesters-south-gujarat-are-trapped-bondage-one-generation-after-another>> accessed 24 May 2018; See also Chitragada Chaudhuri, *Bitter Harvest* (People's Archive of Rural India, 18 December 2014) < <https://ruralindiaonline.org/articles/the-sugarcane-cutters-bitter-harvest> > accessed 16 May 2018.

⁴⁸ Correspondent, Women Labourers in Bengaluru sexually harassed, state Mum: Amnesty International DNA (2 May 2018) <<http://www.dnaindia.com/india/report-women-labourers-in-bengaluru-sexually-harassed-state-mum-amnesty-international-india-2610611>>

⁴⁹ Rose (n 46).

⁵⁰ *ibid.*

⁵¹ ISMWA, ss 14 and 15.

⁵² Rule (n 9) 22.

⁵³ Sukanya Chaudhuri, '2 lakh Odisha workers suffer in hellish Andhra kilns' *The Times of India* (Kolkata, 27 January 2013) <<https://timesofindia.indiatimes.com/india/2-lakh-Odisha-workers-suffer-in-hellish-Andhra-kilns/articleshow/18201900.cms>> accessed 14 May 2018.

g. Grievance Redressal

Once recruited, the migrants have no choice but to bury their grievances under the mountain of poverty and helplessness. Having none to represent their interests, they fall prey in the hands of exploitation. Establishments that employ migrant labour are barely have trade unions. The present system of grievance redressal discussed in the preceding section is superficial in nature given the peculiar problems encountered by the migrant workmen especially linguistic barriers, ethnic segregation and helplessness. Vulnerability among women is on the higher side. For instance, migrant women workers aged between 13-23, employed in the garment industries of Bengaluru are often abused with sexual remarks and violence⁵⁴. An empirical study conducted by the author in the migrant inhabited regions of Cuttack revealed that labour contractors often molest and sexually abuse migrant girls and at times forcibly take them away from their parents/husbands.⁵⁵ These matters generally go unreported and seldom action is taken. Given these circumstances, the grievance redressal mechanism has proved to be absolutely futile. Despite legal provisions⁵⁶ empowering them with the right to free legal aid, the provision has rarely been invoked.

h. Disproportionate Penalties:

The punishment imposed for contravention of the provisions of the Act may extend to one year or with fine which may extend to one year or with fine which may extend to one thousand rupees or both and in case the contravention continues an additional fine of Rs.100 shall be levied for every additional day for which the contravention continues.⁵⁷ Such being the nature of punishment, people who flout the legal provisions will have little or no fear.

⁵⁴ Correspondent, 'Women Labourers in Bengaluru sexually harassed, state Mum: Amnesty International' *DNA* (2 May 2018) <<http://www.dnaindia.com/india/report-women-labourers-in-bengaluru-sexually-harassed-state-mum-amnesty-international-india-2610611>> accessed 20 May 2018.

⁵⁵ Sayantani Bagchi, *Distress Labour Migration in Odisha: A Critical Study of the existing laws and policies* (Unpublished LL.M Dissertation submitted to the National Law University, Odisha in 2016) ch VI.

⁵⁶ Rule (n 9) 58.

⁵⁷ ISMWA, s 25.

The above mentioned factors point out the deficiencies in the law and its implementation.

JUDICIAL APPROACH IN SAFEGUARDING RIGHTS OF MIGRANT WORKMEN

There are multifarious factors involved in the course of recruiting migrant labour. It is definitely not as straight as it apparently appears to be. The zigzag way of functioning of the law reflects that the statutory functionaries operating under the Act, act in a way prejudicial to the interests of the beneficiaries. While there exist some sanctions (though insignificant) against the contractors or employers violating the provisions the law, seldom effective statutory limitations are imposed on the government officers (Licensing officers and Registering Officers) who fail to discharge their duties with respect to licensing, investigation or registration. The provisions of the ISMWA are occasionally invoked and perpetrators are generally booked under the Penal Code. Again, there is not an iota of doubt regarding the indifference and lack of apathy shown by state officials with regard to the enforceability of the laws. Labour legislations tend to heap more and more powers on state officials without providing for an accountability mechanism. States repeatedly disregard the directions/suggestions of the Courts with respect to implementation of labour legislations.⁵⁸ In such cases, the option to ensure accountability by invoking Articles 32 and 226 seems to be the last resort. Labour Rights stand amidst the foremost promises that our constitution makes to the Indian populace with an endeavour to uphold the varied shades of liberty and liberty. In addition to Fundamental Rights, the Directive Principles also safeguard the interests and rights of the working class by laying down the course of action to be followed by the State.⁵⁹

The higher judiciary in number of occasions has come down heavily on the continuing atrocities and hostility towards the labour classes. Justice P. N Bhagwati defends the cause of human dignity saying *“if the sugar barons and the alcohol kings have the Fundamental Right to carry on their business and to fatten their purses by exploiting the consumer public, have the ‘chamars’ belonging to the lowest strata of society no Fundamental*

⁵⁸ *National Campaign Committee for Central Legislation v Union of India* CONMT. PET. (C) No. 52/2013 in W.P. (C) No. 318/2006 (decided on 19 March 2018).

⁵⁹ Constitution of India, arts 14, 19, 21, 23, 24, 41, 42, 43, 43A.

*Right to earn an honest living through their sweat and toil?.*⁶⁰ Courts have intervened to address concerns like release and rehabilitation of bonded labour⁶¹, prevention of sexual harassment at workplace⁶², prohibiting child labour, ensuring payment of minimum wages and protection under the Inter-State Migrant Workmen Act⁶³. In addition to these, Courts in frequent occasions have issued stringent guidelines, suggestions and directives to the Central and State Labour Departments to implement laws and policies made by the Parliament. It has called for recurrent inspections by administering bodies⁶⁴ and has made arrangements for follow-up of its orders. However, strong disregard and indifference have been shown by the Ministry of Labour and Employment, Government of India especially with regard to the implementation of these directives in the concerned areas.⁶⁵

In the aftermath of a gruesome incident that took place in the year 2013, the Apex Court taking *suo moto* cognizance expressed deep dissatisfaction over the inaction of the States with respect to the exploitation of the migrant labour. The gory tale marks the death of humanity and stirs a sense of poignancy in the deepest chambers of our hearts. The hands of two migrant workmen from Kalahandi (Odisha) were cold-heartedly severed within seconds by inebriated labour contractors when the two men refused to be taken to a distant place and could not pay back the advance amount taken. After the incident came to light, the Government announced a compensation of Rs. 2 lakhs and seven perpetrators were arrested immediately by the Police⁶⁶. Immediately after the matter was taken up *suo moto* by the Apex Court, the High Court at Orissa and High Court of Judicature at Hyderabad were directed to deal

⁶⁰ *People's Union for Democratic Rights v Union of India* AIR 1982 SC 1473.

⁶¹ *Bandhua Mukti Morcha v Union of India* 1991 SCR (3) 524.

⁶² *Visakha v State of Rajasthan* [1997] 6 SCC 241.

⁶³ PUDR (n 59).

⁶⁴ *Labourers Working on Salal Hydro Electric Project v State of Jammu Kashmir* [1984] 3 SCC 538.

⁶⁵ *National Campaign Committee for Central Legislation v Union of India* CONMT. PET. (C) No. 52/2013 in W.P. (C) No. 318/2006 (decided on 19 March 2018).

⁶⁶ Pramodini Praddhan, 'A Report on Migrant Workers' Palm Chopping Incident' [2014] 39 (4) PUCL Bulletin 5,6 < <http://www.pucl.org/bulletins/2014/PUCLapr2014.pdf>> accessed 21 April 218.

with the same⁶⁷. Number of questions were posed before the Governments of Odisha and Andhra Pradesh as to whether short term or long term action plans have been drawn up to address the exploitation of migrant labour, what is the number of complaints filed under the ISMWA, whether inspectors under the Act regularly inspect and furnish report of the same, whether surveys are conducted to identify the ground realities, what steps have been taken to prevent recurrence of the issues⁶⁸. The Court expressed deep dissatisfaction over the Government's apathy towards these laws.

In the recent years, the stance of higher judiciary has been criticized to have turned into 'anti-worker stance' since the liberalization of the Indian economy. The judicial approach has been condemned to have been against the Constitutional aspirations embodied in the Preamble and Directives. The role of the Judiciary in dealing with issues concerning distressed migration of labour in India has not been instrumental. However, certain exemplary decisions have impacted largely in shaping labour rights jurisprudence in India. In *Labourers Working On Salal Hydro Electric Project v State of Jammu Kashmir*⁶⁹, the Supreme Court taking note of the exploitative pattern of work thrust upon the migrant labourers expressed serious concern over the issue. Not only contractors but also sub-contractors or 'piece wagers' were held bound to obtain a license under Section 12 of the ISMWA. The Court pressed upon the need to pay minimum wages to the migrant workmen without deductions apart from those endorsed by law. In *Bandhua Mukti Morcha Case*⁷⁰, the court declared bonded labour to a form of forced labour under Art.23 of the Constitution and clearly articulated that failure of the State to identify bonded labourers and release them from bondage and rehabilitate them as required under the provisions of the Bonded Labour System (Abolition) Act, 1976 amounts to violation of right to life under Article 21 of the Constitution. Justice Bhagwati in this case observed that "*right to live with human dignity....must include protection of health and strength of workers men and women of tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom of dignity, educational facilities, just and humane conditions of*

⁶⁷ *In Re Chopping of Palms of Two Migrants* 2015 (12) SCALE 569.

⁶⁸ *ibid.*

⁶⁹ *Labourers Working on Salal Hydro Electric Project* (n 63).

⁷⁰ *Bandhua Mukti* (n 60).

work and maternity relief". In *People's Union for Democratic Rights v Union of India*⁷¹, popularly known as *the Asiad Case*, most of the labourers from Bihar, Orissa, Tamil Nadu and West Bengal were recruited in Delhi through middlemen. The petitioners contented that in almost all the sites, entitlements like displacement allowances, accommodation, safety working conditions, free medical facilities were blatantly denied to the migrant workmen. Workers were made to live in tents susceptible to rain water seepage accommodating five to six people without electricity or sanitation. Violations under a plethora of legislations including ISMWA were brought to the notice of the Court. The Court severely condemned the ill-treatment meted out to the labourers by the contractors and was astonished to note the paltry amount of fine imposed by Magistrates in cases of violation of the laws. The Court vehemently criticizing the authorities held that 'the Union of India, The delhi administration and the Delhi Development Authority cannot fold their hands in despair and become silent spectators of the breach of a constitutional prohibition being committed by their own contractors". Suggestions and stringent directives meant to regulate executive action were laid down.

It is evident that the scope of judicial intervention is pretty narrow given the prevailing circumstances. Cases not otherwise extreme are unnoticed and directions by Courts are overtly defied. Intervention of the media, academicians or civil society appears to be the only ways in which the never ending violations come to light.

CONCLUSION AND SUGGESTIONS

India's informal labour force constitutes a sizeable proportion of its populace. At the same time, it constitutes a segment that is susceptible to large scale exploitation. Enchained by the dominant class, an unfair life is what they lead. The boost in industrialisation, privatisation and liberalization has led to further subjugation of the labour class. Labour laws are made with the intention of humanizing the situations faced by the labour and ensuring their overall welfare. Social welfare legislations are to be interpreted in light of the constitutional goals set out in the Preamble and the Directive Principles especially Articles 38, 39, 43 and 43A. The concept of social and economic justice is a living concept of revolutionary import, it

⁷¹ AIR 1982 SC 1473.

gives sustenance to the rule of law and meaning and significance to the ideal of welfare State.

Migration is inevitable and so are its outcomes. The adversities involved in the phenomenon of migration arise out of varied factors. It would be illogical to hold any single factor responsible for the outcomes. Nevertheless, the primary stakeholders who exert considerable control over the adverse outcomes of distress migration must take up both moral and statutory responsibility to mitigate the sorrowful plight of the migrant labour. Incidents like palm chopping of the migrant labour, sexual abuse of women workers, child labour, practices to which migrants are highly vulnerable should be prioritised by the State. With the prevalence of a negligent, corrupt and immoral system intending to fulfil its own interest, we having no other option but to repose faith on the State machinery which can uplift the standards of these poor masses. The author believes that the following actions may lead to an effective implementation of the Act. Employers and unscrupulous intermediaries cannot be allowed to immunize themselves by paying such insignificant amount of penalty which practically has no impact on them. The amount of penalty must be commensurate to the crime committed. Relevant changes must be made in the ISMWA. A transparent and vigilant approach in preventing dishonest practices has to be evolved keeping in mind the peculiarities of the process. On an urgent basis, the applicability of the ISMWA should be extended to intra-state migrants and migrants employed otherwise than through labour contractors. Rather than concentrating powers on an Inspector, a special team of well-trained officers must be recruited to oversee the implementation of the Act coupled with an accountability mechanism. Migrant workmen must be given access to such a team. Helpline numbers must be displayed in the transit routes especially railway stations. Transit routes must be frequented by Police teams. Governments must make available the details of labour contractors and the labourers they recruit on the public domain by frequently updating websites. Governments of both sending and receiving States must have their records tallied with each other. Every establishment must go through regular audits with regard to payment of wages and maintenance of records. A practical mechanism enabling migrant workmen to ventilate their grievances must be evolved. State Legal Services Authorities should make frequent visits to the migration prone areas and conduct awareness camps and legal aid clinics. States must join hands with civil societies working actively in the field of labour migration and address the issues of women and children including their health and education.

The evils plaguing the process of labour migration are most unsuited to the modern day progressive world. It is our solemn duty to address this issue. We the countrymen being final consumers, it is our foremost responsibility to collectively come forward fulfilling our duty to promote harmony and the spirit of common brotherhood amongst all people and to develop humanism⁷². It is time for us to fight all odds and march towards establishing a society where every man lives his own life spreading the wings of liberty.

⁷² Constitution of India, art 51A (e) and (h).