



STATUS OF MIGRANT WORKERS IN INDIA – A LEGAL PERSPECTIVE

A. Mohamed Ibrahim

Assistant Professor, School of Law, SASTRA University, Thanjavur, Tamilnadu.

Introduction

Migration is the movement of people into another country or region or area to which they are not native in order to settle there especially as permanent residents or future citizens. Migration in India is mostly influenced by social structures and patterns of development. Uneven development is the main cause of migration. The landless poor persons mostly of lower castes, indigenous communities and economically backward constitute a larger portion of migrants.

Over the past 60 years, there has been a rapid growth in the number of people migrating between countries, to make a better life for their family, to pursue work or to seek protection. International migration has become an integral part of the global economy.

Definition of Migrant Worker

The term "migrant worker" refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national¹. "Inter-State migrant worker" means any person who is recruited by or through a contractor in one state under an agreement or other arrangement for employment in an establishment in another state, whether with or without knowledge of the principal employer in relation to such establishment². These two definitions says that the migrants are both internal and international.

Various modes of Migration

Migration have been categorized into three different categories –

- i) **Forced Migration** - Natural disaster
Social/Political problems
Development induced displacement
- ii) **Environmental Health related Migration** - Housing problems and Health care
- iii) **Other Migration**- In search of employment, Business, Proximity to place of work, Studies, Acquisition of own house/flat

Living Condition of Migrants

Migrant skilled and unskilled labourers of India constitute about 40 to 85 percent of low wage working population in many parts of the Middle East³. Domestic migrant workers have been estimated to be about 4.2 million. These workers range from full-time to part-time workers, temporary or permanent workers.

Migrant labourers, whether agricultural or non-agricultural, live in deplorable condition without provision for safe drinking water or hygienic sanitation. Most live in open spaces or make shift shelters. Food costs more for migrant workers who are not able to obtain temporary ration cards.

Migrants working in harsh circumstances and living in unhygienic conditions suffer from serious occupational health problems and are vulnerable to disease. Migrants cannot access various health and family care programmes due to their temporary status.

Impact of Globalization on Migrant Workers

As the former ILO Director General Juan Somavia puts it "if you look at globalization from the point of view of peoples' concerns, its single biggest failure is its inability to create jobs where people live", and he adds "In a world of winners and losers, the losers do not simply disappear; they seek somewhere else to go".⁴

¹Article 2, *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*.

²Sec.2 (e) of *Inter-State Migrant workmen (Regulation of Employment and Conditions of Service) Act, 1979*.

³ See more at http://www.liquisearch.com/labour_in_india/unorganized_labor_issues/migrant_workers last accessed on 31.07.2016.

⁴ ILO (2000). *Workers Without Frontiers: The Impact Of Globalization On International Migration*, By Peter Stalker, Geneva, International Labour Office, 2000.



Globalization has created a situation which generated a worldwide phenomenon of migration of millions of workers to other countries. The finance capital's thrust for cheap labour to bring down the cost of production in an environment of cut throat competition has given a powerful impetus to the phenomenon of migration of labour both within as well as outside the country.

The migration of labour has created a totally unregulated labour market where finance capital will have its sway over the entire gamut of labour relations.

Internal Migration in Indian Context

The constitution declares that every citizen have the right to move throughout the territory of India and also to reside and settle in any part of the territory of India⁵. Hence it is a fundamental right of the citizens of India to have a free movement all over India.

India's total population, as recorded in the recently concluded Census 2011, stands at 1.21 billion. Internal migrants in India constitute a large population of 309 million internal migrants or 30 percent of the population (Census of India, 2001), and by more recent estimates 326 million or 28.5 percent of the population.

Women constitute an overwhelming majority of internal migrants, 70.7 per cent of internal migrants as per Census 2001, and 80 per cent of total internal migrants. However, several researchers are working to uncover the more complex reality lying behind statistics and consider that women migrate for a number of other reasons that are not captured by census and macro-data surveys.

Migrants continually face difficulties in becoming a full part of the economic, cultural, social and political lives of society.

National Legislation on Migrant Workers

Realizing the importance of the issue India also enacted Inter-state Migrant workmen (Regulation of Employment and Conditions of Service) Act, 1979⁶.

Though the Act covers only interstate migrants, it lays down that contractors must pay timely wages equal or higher than the minimum wage, provide suitable residential accommodation, prescribed medical facilities, protective clothing, notify accidents and casualties to specified authorities and kin⁷.

The Act provides for the right to raise industrial disputes in the provincial jurisdiction where they work or in their home province. The Act sets penalties including imprisonment for non-compliance. At the same time the Act provides an escape route to principal employers if they can show that transgressions were committed without their knowledge⁸.

Hence, there is no improvement in the working and living conditions of the migrant workers. There are no structures to adequately address the basic issues concerning migrant labour relations, leave aside, addressing the whole gamut of labour relations. There is lack of support from civil society. It does not monitor unregistered contractors and establishments. Important provisions of the Act such as minimum wages, displacement allowance, medical facilities and protective clothing remain unenforced.

Indian Judiciary on Migrant workers

The Supreme Court and the various High Courts have been taking up cases for strengthening and also monitoring various scheme of rehabilitation for trafficked victims. The court while exercising its jurisdiction for enforcement of fundamental rights has given various landmark judgments for increasing the response of the Government in combating trafficking.

In *Bandhua Mukti Morchav v. Union of India*⁹ the apex Court took the view that failure to rehabilitate freed bonded labourers would violate Articles 21 and 23 of the Constitution.

⁵ Article 19(1)(d) and Article 19(1)(e), of the Constitution of India, 1950.

⁶ Received the Assent of the President on June 11, 1979, and Published in the *Gaz. of India Pt. II, dt. 12th June, 1979, pp253-65.*

⁷ Sec 13 to 16 of *Inter-State Migrant workmen (Regulation of Employment and Conditions of Service) Act, 1979.*

⁸ *Ibid.*

⁹ *Neerja Chaudhary v. State of M.P. (1984) 3 SCC 243.*



Again in *P. Sivaswamy v. State of Andha Pradesh*¹⁰ Supreme Court held that the grant of financial assistance by the States of Rs.738/- per family of the released bonded labourers was inadequate for rehabilitation. Moreover the States, employers have a duty to rehabilitate the released bonded labourers.

Education for Migrant Children

Education provisions should be sufficiently flexible to ensure that mobile populations are not left out. The innovative policy responses and practices piloted by the Government, under the Sarva Shiksha Abhiyan (SSA) (Education for All Movement). It is the Government of India's flagship programme for the achievement of Universalisation of Elementary Education (UEE) in a time-bound manner, making free and compulsory education available to children in the 6-14 years age group.

The Right of Children to Free and Compulsory Education Act or Right to Education Act (RTE), is an Act of the Parliament of India enacted on 4 August 2009, which describes the modalities of the importance of free and compulsory education for children between 6 and 14 in India under Article 21A of the Indian Constitution.

Conclusion

The problem of migrant labour is huge and requires cooperation and coordination between the government and other social actors including the trade unions. Trade Unions must play an active role in assisting and protecting migrant workers and irregular migration has increased in the region and it has to be checked. NGO's having skilled manpower and resources can provide sustainable growth to the migrants. Most of the migrants lack adequate basic facilities and their living conditions are often virtually inhuman.

Most critically, their children do not have access to education if they live on the work sites with their parents. Geographically scattered, socio-culturally fragmented and economically disenfranchised, these labour migrants are not recognized as a class or a social category. Poorer migrant workers, crowded into the lower ends of the labour market, have few entitlements to their employers or the public authorities in the destination areas. They have low personal assets and suffer a lot of problems in the destination areas. Devoid of social security and legal protection, they work in poor conditions and face labour market discrimination. Minimum wages are often flouted and employers bear no responsibility for health, shelter and other basic requirements of migrants. Thus the legal regime addressed for the protection of interest of the migrant workers is need to cover strengthened.

References

1. United Nations Development Programme (UNDP) (Human Development Research Paper 2009 available: http://hdr.undp.org/en/reports/global/hdr2009/papers/HDRP_2009_13.pdf last accessed date on 26.08.2016
2. Deshingkar, P. and Farrington, J. 2009. Circular Migration and Multi-locational Livelihood Strategies in Rural India, New Delhi, Oxford University Press.
3. Mahendra Pal Singh, "V.N. Shukla's Constitution of India", 2008. Eastern Book Company, Lucknow.
4. Dr. J.N. Pandey, "Constitutional Law of India", 2005 Central Law Agency, Allahabad.
5. National Commission on Rural Labour 1991 Report of the Study Group on Migrant Labour, Ministry of Labour, Government of India.
6. National Sample Survey Organization (NSSO). 2010. Migration in India 2007–08 (64th round) New Delhi, Ministry of Statistics and Programme Implementation, Government of India.
7. Smita. 2011. Distress Seasonal Migration and its Impact on Children's Education. Presentation at the UNESCO–UNICEF National Workshop on Internal Migration and Human Development in India, 6–7 December 2011, New Delhi.
8. Census of India, 2001 and 2011.

¹⁰ (1988) 4 SCC 466.