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Migrant Workers and Labour Law in India



History of labour legislations in India

- The first phase of the labour legislations were enacted during 1923-1945 and they were merely regulatory in character.
- The second phase (1946-1952) legislations were enacted after World War II which impacted the relationship between management and workers. The state did not play an intervening role during this time. The employers were also never put to any onerous obligations.
- A number of welfare legislations were enacted in the third phase (1961-1986) and the state was obligated to legislate the directive principles of state policy.
- Most of the legislations were made as a result of unionization of workers. The government made laws sector-wise and segment-wise i.e. plantation labour, mine workers, beedi and cigar workers, and motor transport workers etc. Each of them had their own peculiarities. The conditions of those industries were also unique. It was only in this phase that certain obligations were imposed on employers.
- The Industrial Disputes Act, 1947 was prominent among them which aimed to investigate and settle industrial disputes. However, they did not grant any right to collective bargaining (except in some states) by granting trade union recognition. They also robbed the right of workers to resort to strike. The Supreme Court had ruled that “right to strike” is not a fundamental right guaranteed under the Constitution (Rangarajan 2003).
- The enactment of Contract Labour (Abolition and Regulation) Act, 1970 instead of ameliorating the conditions of outsourced labour had perennially continued the

engagement of labour through contract and their gross exploitation. The Supreme Court which once criticized the outsourcing of labour later, put a ban on the workers right to seek for abolition of contract labour. Today, they have only a political solution of moving the appropriate governments for the abolition of contract labour in regular employments. Today, the contract workers are only left with a political pathway.

- With liberalization and globalization of the economy, many public sector units were privatized. Today, vast sections of the unorganized labour are not covered by any worthwhile labour legislations. Even where legislation operates, large number of outsourced labour are unable to get any legal protection.
- Labour unions have also become lackadaisical in their attitude and approach. This has resulted in large-scale demoralization of the workforce.



Source : www.indianwomenblog.com

Migration and its impact: ILO recommendations

- Migration for Employment Convention of 1939 was adopted by ILO at its 21st session. What bothered them most was the rampant absenteeism, due to workers going back to the villages during agricultural seasons. The intervening World War-II to some extent stopped the exodus. Following the resolutions of the Tripartite Labour Conference, the British Indian government appointed the Labour Investigation Committee (LIC) known as the Rege Committee.
- The recommendations of the Rege Committee regarding internal migration were important.
- In its 38th session held in 1955 the ILO made recommendations concerning the protection of migrant workers in underdeveloped countries and territories.
- The 143rd convention of the ILO held in 1975 was concerning migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers. Recommendation number 151 also dealt with migrant workers.
- All these recommendations were only concerned about migration of workers from one country to another. The first National Commission on Labour headed by Justice Gajendragadhkar did not devote much attention on the problem of migrant workers. After the reorganization of the states on linguistic basis (1956) was done and different states began to have their own labour legislations on many areas, the discussion on migrant labour increased.

- The trade unions never took up the issue for special consideration. In most of the places like coal, steel, dock-labour and plantations the issue was not dealt with independently. The problem of migrant labour was dealt with only along with the problems of other workers.

Labour legislations and impact on migrant workers

- The 28th Session of the 'Labour Ministers' Conference held in 1976 considered the question of protection and welfare of Dadan Labour (system of employment of inter-state migrant labour) important. It recommended the setting up of a small Compact Committee to go into the whole question and to suggest measures for eliminating the abuses prevalent in this system.
- The Compact Committee which was constituted in February, 1977, therefore, recommended the enactment of a separate Central legislation to regulate the employment of inter-state migrant workers. While the Act came into effect in 1979, many states took their own time to frame rules under the Act and were lethargic in implementing the Act. This led the Supreme Court to give directions to the states and union territories in the Damodar Panda case:

“We do not think there can be any valid justification for not permitting the officers of the Originating State to hold appropriate enquiries in the Recipient State in regard to persons of the Originating State working as migrant labour in the Recipient State. We would, therefore, make a direction that to implement the provisions of the Act of 1979 referred to above every State and Union Territory in India would be obliged to permit Officers of originating States of migrant labour for holding appropriate inquiries within the limits of the Recipient States for enforcement of the statute and no Recipient State shall place any embargo or hindrance in such process.”

Supreme Court in Dr. Damodar Panda's case

- The Inter-State Migrant Workmen Act was the only labour law in India with a special focus on internal migrants and their issues. Several directions were given by the Supreme Court to the High Courts and other subordinate courts regarding action to be taken against offenders. The directions given were only to find out whether they were free labour or recruited by agents and whether they were entitled for travelling allowance and displacement allowance. The problems faced by the inter-state migrant workers are much wider than what was attempted to be dealt by the Act and the Rules framed thereunder.
- Besides the lack of statistics and registration and also non-provision of allowances while in employment and compensation in case of death and injuries, the question of safety of the workers is a major issue. Studies and reports show that among migrant workers, women are the worst affected.

- The Inter State Migrant Workmen Act, 1979 defined the term “inter-state migrant workman” as follows:

“inter-state migrant workman” means any person who is recruited by or through a contractor in one State under an agreement or other arrangement for employment in an establishment in another State, whether with or without the knowledge of the principal employer in relation to such establishment.

- The question arises whether the present laws have dealt with these issues and whether the laws are effective in removing the problems faced by migrant labour.
- After the enactment of the States Re-organisation Act, 1956 and the ISMW Act, 1979 which defined the term migrant worker, the problems of those workers were also defined by linguistic questions.
- The problems of migrant workers are many which cannot be addressed by any simple labour legislation. There are other areas like their shelter, civic rights, right to access civic amenities etc.
- There are no reliable statistics available with reference to the actual figures of migrant workers working in various states. A report published by the Times of India said:

“Tamil Nadu is home to more than a million migrant workers, a government-commissioned survey has found. The just-concluded survey conducted by a private consultant on behalf of the state labour department shows that a majority of the 10.67 lakh migrant workers in the state are unskilled workers. About 27% are employed in the manufacturing sector, 14% in textile industries and 11.41% in the construction sector. The numbers may be under-reported, say social workers, but the data will help them get healthcare and other benefits”.

The Times of India, 5 February 2016

- There were cases where workers were suspected of being involved in criminal activities. They were innocently taken to other states as labourers, but were asked to do illegal things which brought immediate retribution by the authorities.

In February 2012, five men who were suspected to be involved in two major bank robberies in Chennai earlier this year were killed in an encounter with police. Out of the five men killed in the encounter, four are said to be from Bihar and one from West Bengal. According to some reports, one of them was an engineering student. These five persons were staying in tenanted premises and were shot dead only due to suspicion. No one knows their origin and the encounter death did not result in any enquiry against the policemen involved. Unfortunately, the High Court dismissed the public interest litigation filed in this regard and the matter rests therein.

The Times of India, 12 July 2014

- Major trade unions, even in areas where there are organised, do not specifically address these issues of migrant workers.