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Migrant Workers and Law in India

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(Retd. Judge, High Court: Madras)

Indian Labour Laws are almost a century old. The then colonial government never wanted to extend to the British India the labour legislations prevailing in the United Kingdom during its rule. After World War-I, dubiously the colonial India was also made as a member of the International Labour Organisation(ILO).

After lot of hue and cry, a Royal Commission of labour came to India in 1929. In its report it said:

> "Everything that we have seen in India has forced upon the conviction that the need of organization among Indian workmen is great….. Nothing but a strong Trade Union movement will give the Indian workman adequate protection. … It is in the power to combine that labour has the only effective safeguard against exploitation and the only lasting security against inhumane conditions"

It was their opinion that the trade unionization of the workers alone will improve their economic conditions.

The first phase of the labour legislations enacted during 1923-1945 and they were merely regulatory in character. In the second phase made after World War-II and by then a nationalist government was in its place made laws impacting on the relationship between management and workers (1946-1952). In none of those legislations there were any big role assigned for the state. The Employers were never put to any onerous obligations.

The Constitution of India, 1950 (w.e.f 26.1.1950) in order to provide Right against Exploitation, inserted two articles (Art. 23 and 24) in its fundamental rights chapter, which are enforceable in courts of law. Since the state was obliged to make laws in terms of the directive principles of state policy, a number of welfare legislations were enacted in the third phase (1961-1986).

The legislations so made during the second phase will show that most of them were as a result of unionization of workmen in particular sectors. They were covering only an identifiable group. 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 the employers were imposed with certain obligations.

The Industrial Disputes Act, 1947 was prominent among them and it aimed to investigate and settle industrial disputes. The process by which such resolution was by way of "Conciliation" between parties and failing which by adjudication by labour courts and industrial tribunals. The parties were made to abide by the decision of the courts. Ultimately the aim of organising workers into trade unions and by collective bargaining achieving certain fair conditions of service. But they did not grant any right to collective bargaining (except in some states) by granting trade union recognition. They also robbed the right of workmen to resort to strike, a weapon in their hands. Under the present labour law, there is no scope for going on 'strike'. By a devious method the right has been taken away. The Supreme Court had ruled that "right to strike" is not a fundamental right guaranteed under the Constitution(T.K.Rangarajan 2003) **(1)**

Added to these woes, is the increasing resort to "outsourcing" by the employers and it has been legitimized by the govt. and sanctified by the courts. The enactment of Contract Labour (Abolition and Regulation) Act , 1970 had instead of ameliorating the conditions of outsourced labour had perennially continued the engagement of labour through contract and their gross exploitation. The Supreme Court once criticized the outsourcing of labour, later did not hesitate to put a ban on the workers right to seek for abolition of contract labour. (Steel Authority 2001)**(2).** Today they have only a political solution of moving the appropriate governments for abolition the contract labour in regular employments.

It was around this time the policy of the government turned towards liberalisation, privatisation and globalisation of the economy. Many public sector units were privatised. Foreign companies were encouraged to shift their units to India. Many state governments created Special Economic Zones (SEZ) so as to attract investments. The entrepreneurs in SEZs were assured of exemption from the labour laws. The government's policy of privatisation received strongest support from the higher judiciary. Challenges made to the disinvestment of public sector units was rejected and judicial review was prohibited.(Balco 2002)**(3)**

Further in State of Punjab case (2004) **(4)**, the Supreme Court held as follows:

> "Socialism might have been a catchword from our history. It may be present in the preamble of our Constitution. However, due to the liberalisation policy adopted by the Central Government from the early nineties, this view that the Indian society is essentially wedded to socialism is definitely withering away". "Globalisation has brought a radical change in the economic and social landscape of the country. Its impact on the Constitution and constitutionalism is significant. …… The Court will have to take a realistic view in interpretation of the Constitution having regard to the changing economic scenario"

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. While the trade unions of labour are seeking for a comprehensive labour legislation, their employers are seeking more and more deregulations(exemptions) from those laws. This had set in large scale of demoralization of the workforce.

The enforcement machineries have become utterly corrupt and the enforcement officers look the other way when serious breach of labour legislations came to their notice. The 3-tier appeals system in our laws has resulted in delay. A contested industrial dispute normally takes a minimum of twenty years to reach its finality. A survey of the disputes for adjudication before labour courts showed that 90% of the disputes were of cases relating to dismissal of individual workmen. Gone are the days when the adjudicating forums were dealing with "collective disputes" relating to work load, wages, Bonus and work force etc. Today no trade union worth its name, ever wants to go for an adjudication of their collective dispute. They would rather settle matters before the negotiating tables. The trade unions operating in large units hardly come to labour courts for adjudication of their disputes. The existing labour laws have largely failed to deliver goods.

It is in this background, we will have to study, the position of migrant worker in relation to their employment and in particular the special legislation made in their favour.

Before the independence, the colonial govt. had a much bigger geographical territory and forced migration of labour was rampant. The sorrows and sufferings of those labour have been picturised in literature. About an 100 years ago, Mahakavi Subramanya Bharathi wrote a poem in Tamil on the plight of migrant hindu women working in the cane fields in the Fiji Islands which was published in 1917[(5)]. The poem aroused the conscience of the tamil people. An English translation of the poem titled "In the Sugarcane Field" reads as follows:-

In the sugarcane fields, oh!
In those sugarcane fields...

In the sugarcane fields
They labour till their limbs
Weaken and are ready to fall!
Ceaseless smouldering
Has shrunk the hearts
Of those Hindu women.
Isn't there a way to reduce their sorrow?
Isn't there a potion to lessen their pain?
Like bullocks at an oil-press,
They toil in those cane fields.

Even a demon will surrender,
It's said, to a woman. O God!
Will you not take pity on them?

Will the tears of those destitutes
Only fall and mix with the soil?
In the middle of the great southern sea,
In an island hidden from sight,
Women languish in a dense forest
In those sugarcane fields.
Will they think of their mother country?
Will they think of their maternal home
And yearn for the day they will return?
You would have heard, oh wind,
Their loud weeping and wailing!
Sunk as they are in the pit of sorrow
Will you say nothing to save our women?
They have no more strength left to cry.

They rage within at the torment
That assaults their chastity,
Those poor wretched womenfolk
With no hope of a sanctuary
Are buckling under the suffering.
Can we let them die, oh Kali?
Can we not end their plight now?
Brave Kali! Oh Chamundi Kali!

Even in post independent India the migrant workers engaged in cane fields undergo untold miseries. It has been well accounted by Prof.Subhash Jadhav **(6)**.

The case of the indentured labour and their forced migration came to the notice of the Royal Commission of Labour (1929)**(7)** which was commissioned to a study. Its findings on the migration and sources of labour supply were as follows: (1) that the smaller centres everywhere draw on the surrounding rural areas for all the workers they require, except labour demanding special skill; (2) that the only centres which have reached the stage of being compelled to go far afield for the bulk of their labour are Jamshedpur and two big industrial areas of Bombay and Hoogly; (3) that while in the West, factory workers are drawn mainly from amongst persons brought up in the towns, and partly from amongst those who have abandoned the country for the towns, the Indian factory operatives are nearly all migrants.

Writing on the Report, Margaret Read **(8)** commented:

“This does not mean however, as the Commission pointed out, that the “main industries of India are manned by a mass of agricultural workers, temporarily forsaking the mattock and

the plough to add to their income by a brief spell of industrial work in the city. This is not an accurate representation of the position, and it has been responsible occasionally for a mistaken attitude to labour questions." What it does mean is that the factory workers who are villagers at heart maintain a continuous contact with their villages of origin. The maintaining of this close contact between village and city by the workers has certain important results"

The Royal Commission of Labour raised the question that whether the future of Indian industry make efforts towards building up an industrial population divorced from villages or should the existing contact be maintained and stimulated? It was of the opinion that in present circumstances the link with the village is a distinct asset, and that the general aim should be not to undermine it but to encourage it, and as far as possible to regularize it….Whatever view may be taken of the more distant future, we believe that at the present stage it is not advisable that this striking feature which marked the beginnings of Indian industry and has shown such persistence during its steady advance should be discouraged." The Report did not recommend any discouragement of recruitment of labour by agents. On the other hand, it welcomed the recruitment of textile labour by jobbers.

But the colonial govt. did nothing to safeguard the interests of migrant labour who were thronging to the cities in search of employments in factories. (It was at that time there was a "Migration for Employment Convention of 1939" was adopted by ILO at its 21st session). What bothered them most was the rampant absentism, due to workers going back to the villages during agricultural seasons. The intervening World War-II also to some extent stopped the exodus. It was at this juncture, the Tripartite Labour Conference Resolution (September 1943) made the british Indian govt. to appoint the Labour Investigation Committee (LIC) (headed by D.V.Rege, I.C.S). Rege gave a Report to the govt.

On the issue of cutting of rural connection of the industrial workers, the Committee **(9)** opined:

> "……. The obvious course is to improve conditions in the industrial towns, as regards work in factories, housing, wages, nutrition etc., and also to provide measures of social security for the workers. It has been generally admitted that apart from the development of landlessness amongst workers, the village, the joint family and the caste, are steadily deteriorating as economic supports of the workers, and that at the present juncture, the workers are in a transitional stage in which they are gradually losing the support of the village and have not been able to secure a firm footing in the industrial areas. In view of this, to turn back the clock of time and either to prevent the worker from coming to the town or to force him back to the village would be step in the wrong direction."

The Rege Committee while dealing with the internal migration made a recommendation**(10)** as follows:-

> "Migration in Indian Industries is of two kinds: migration within the Province itself and inter-Provincial migration. The first is an outstanding feature of (e.g) the cotton mill industry in Bombay, while the second is a feature of the jute mill industry, engineering and plantations. In regard to inter-district migration the problems which arise are not so serious as those relating to inter-Provincial migration in view of the long distances involved……we feel that the State, while providing social security measures for workers, should also supervise the conditions under which workers migrate from Province to Province and given them the fullest facilities of travel and employment service. Simultaneously, the State should take positive measures to extend the avenue of employment available to the landless labourers in the village and thus take away the unwanted surplus of population which at present exerts a great pressure on land"

It was after the report was made available to the govt**,** a convention concerning migration for employment was convened and the matter was discussed in the 32nd Session of the ILO on 8.6.1949. The revised draft of the convention was brought into force w.e.f 22.1.1952. Thereafter in its 38th session held on 1.6.1955 the ILO made recommendations concerning the protection of migrant workers in underdeveloped countries and territories. The 143rd convention of the ILO (4.6.1975) was concerning migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers. The recommendation no. 151 also dealt with the migrant workers**(11)**.

All these recommendations were only concerned about migration of workmen from one country to another country. When India got its independence and its political territories were redefined, the immediate necessity of making laws specially for migrant workmen moving from one area to another area within the country never arose. It was felt that the existing labour legislations were enough to deal with the labour in general. The first National Commission on Labour headed by Justice Gajendra Gadkar **(12)** did not even devote much attention on the problem of migrant workers.

After the reorganization of the states on linguistic basis(1956) was done and different states begin 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 workmen.

The history behind enacting a special legislation in respect of inter-state migrant workers as found in the objects & reasons appended to the Bill**(13)** at the time of its introduction in the Parliament read:-

> "The Twenty-eighth Session of the 'Labour Ministers' Conference (New Delhi, October 26, 1976) which considered the question of protection and welfare of Dadan Labour 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 inter-State migrant workmen are generally illiterate, unorganised and have normally to work under extremely adverse conditions and in view of these hardships, some administrative and legislative arrangements both in the State from where they are recruited and also in the State where they are engaged for work are necessary to secure effective protection against their exploitation.
>
> 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 workmen as it was felt that thc 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/Sardars/Khatadars, etc., and the facilities required to be provided to these workmen in view of the peculiar circumstances in which they have to work……"

Its objects & reasons **(14)** also further said:-

> "The system of employment of inter-State migrant labour (known in Orissa as Dadan Labour) is an exploitative system prevalent in Orissa and in some other States. In Orissa, Dadan Labour is recruited from various parts of the State through contractors or agents called Sardars/Khatadars for work outside the State in large construction projects. This system lends itself to various abuses. Though the Sardars promise at the time of recruitment that wages calculated on piece-rate basis would be settled every month, the promise is not usually kept. Once the worker comes under the clutches of the contractor, he takes him to a far-off place on payment of railway fare only. No working hours are fixed for these workers and they have to work on all the days in a week under extremely bad working conditions. The provisions of the various labour laws are not being observed in their case and they are subjected to various malpractices."

However unmindful of the origin of this legislation, the Supreme Court in Dr. Damodar Panda's case**(15)** had 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."

The inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) Act,1979 was brought into effect from 11.6.1979. However, many state governments took their own time to frame rules under the Act and were lethargic in implementing the Act. This led to the Supreme Court in giving directions to the states and union territories in the Damodar Panda's case **(16)** which is as follows:-

"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."

The Inter-State Migrant Act attempted to regulate the issue of migrant workers in the following manner:

(i) It will apply to every establishment in which five or more inter-State migrant workmen are employed

(ii) The establishment proposing to employ inter-State migrant workmen will be required to be registered with registering officers appointed under the Central Government or the State Governments,

(iii) The contractor will be required to furnish particulars regarding the workmen in the form to be prescribed by rules to the specified authority

(iv) the wages payable to the migrant workman will be given in the form of guidelines and he is required to be paid wages from the date of his recruitment.

(v) The inter-state migrant workman is made eligible to a displacement allowance and a journey allowance in addition to his wages.

(vi) The amenities that are required to be provided to the workmen would include conditions of work taking into account that they have migrated from another State.

(vii) Inspectors will be appointed by the appropriate Government to see that the provisions of the legislation are being complied with.

(viii) The inter-state migrant workman may raise an industrial dispute arising out of his employment either in the host State or in the home State after his return to that State after the completion of the contract of employment.

(ix) Deterrent punishments have been proposed for the contravention of the provision of the Migrant Act.

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;” (section 2(e))

Thereafter whenever any complaint regarding the treatment meted out to inter-state migrant workmen engaged in big projects was brought to the notice of the court the Union of India and other authorities always took the plea that they are not “workmen” brought by any intermediaries and they came on their own free will and volition and hence the provisions of the Act will have no application. The Supreme Court rejected such a stand of the govts in the case relating to labourers engaged in Salal Hydro Project case **(17)**:-

> “It is also averred in the affidavit in reply that "most of the workers from other States have gone to Salal Project for work OD their own and are therefore strictly speaking not migrant workmen" within the meaning of the definition of that term contained in the Inter State Migrant Workmen Act. We do not think that this justification given in the affidavit in reply for not ensuring the benefits and facilities provided under the Inter State Migrant Workmen Act to atleast some of the workrnen and particularly Oriya workmen can be accepted as valid. lt is clear- from the Statement of objects and Reasons that the Inter State Migrant Workmen Act was enacted with a view to eliminating abuses to which workmen recruited from one State and taken for work to another State were subjected by the contractors, sardars or khatedars recruiting them. The mal-practices indulged in by the contractors, sardars or khatedars”

Similar contentions raised by the Union of India was also rejected in the Bandhuva Mukti Morcha’s case **(18)**:

> “The Union of India in a submission filed on its behalf by Miss Subhasini has taken up the stand that the workmen employed in the one quarries and stone crushers "are coming to join the service in the stone quarries of their own volition and they are not recruited by any agent for being migrated from any State" and "as such they do not come under the definition of the term" inter-State migrant workman.....there can be no doubt that the workmen employed in the stone quarries and stone crushers would be inter-State migrant workmen. The thekedar or jamadar who is engaged by the mine

> lessees or the stone-crusher owners to recruit workmen or employ them on behalf of the mine lessees or stone crusher owners would clearly be a 'contractor'.....and 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 workmen."

The Supreme Court in the Salal Hydro Project case [(19)], among several other directions also gave the following directions:-

> "That all the facilities provided under Section 16 of the Inter-State Migrant Workmen Act, 1979 are provided to the Contract/Inter-State Migrant Workmen as already instructed vide this office No. P & A/P-IV/100(CL)/82/58176-236 dated 2.12.1982"

> "That every inter-State migrant workmen is paid displacement allowance at the time of his recruitment and the journey fare in accordance with Section 14 & 15 of the Inter-State Migrant Workmen Act, 1979"

Considering the leniency being shown in punishing the offenders with regard to these legislations, the Supreme Court also warned all the High Courts and their sub-ordinate courts and impressed upon them to impose punishments strictly in accordance with law in the Asiad case[(20)]: -

> "The Magistrates seem to view the violations of labour laws with great indifference and unconcern as if they are trifling offences undeserving of judicial severity.....If violations of labour laws are going to be punished only by meagre fines, it would be impossible to ensure observance of the labour laws and the labour laws would be reduced to nullity. They would remain merely paper tigers without any teeth or claws. We would like to impress upon the Magistrates and Judges in the country that violations of labour laws must be viewed with strictness and whenever any violations of labour laws are established before them, they should punish the errant employers by imposing adequate punishment."

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.

On 3.1.2014, the Hindu newspaper reported a gruesome incident involving chopping off the palms of two migrant workers in the State of Odisha. The report became a basis for suo motu action by the Supreme Court. Thereafter several orders were pronounced in respect of that case. The Odisha government was asked as to how many complaints have been filed against those who were found violating the provisions of the Migrant Act and the case is still pending [(21)].

First of all there is no reliable statistics available with reference to the actual figures of migrant workmen working in various states. A report published by the Times of India which said [22]:-

> "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"
>
> According to the migrant worker survey, 20.9% of migrant workers in Tamil Nadu live in Kancheepuram district. Most of them work in manufacturing companies. Kancheepuram has units including Ford, Hyundai, BMW and Nissan where several migrant workers are working. The top three districts -- Kancheepuram, Chennai and Tiruvallur -- house 51.3% of the migrant worker population. Real estate projects and the metro rail work have attracted migrant labour. The second maximum number of jobs are offered by textile and allied industries which emply 1.5 lakh workers, evidently why Coimbatore has 12.1% and Tirupur has 9% of the state's migrant population.

Regarding an alleged survey conducted by the T.N. Govt. on the inter-state migrant workmen employed in construction industry in Tamil Nadu the Times of India reported [23] :-

> "Amid complaints of indifference to welfare of migrant labourers, the Tamil Nadu government on Friday announced a survey of migrant labourers to be undertaken by the Tamil Nadu Construction Workers Welfare Board. "Efforts are being taken to conduct a survey of migrant workers from other states to Tamil Nadu," rural industries and labour minister P Mohan told the House on Friday. 'Good' wages and employment draw hundreds of migrant workers from other parts of the country to Tamil Nadu, especially from states like Andhra Pradesh, Odisha, West Bengal and Bihar. Lack of vigilance from the official machinery saw workers suffering at the hands of unscrupulous builders and contractors, who mercilessly exploit them with poor wages and pathetic working conditions.
>
> "....."While proper implementation of Inter-state migrant workmen (regulation of employment and conditions of service) Act, will bring in registration of workers, why is government unnecessarily conducting a survey," said Ponkumar, former chairperson of the state construction workers' welfare board. Of the ten lakh migrant workers, Chennai alone has about three lakh migrants, who work in restaurants, sweet shops and construction industry and employed as security personnel, Kumar said"

Even these exercise had started only when a multistoried building (constructed without proper approved plan) caved in and number of workers were dead or buried in the debris. The newspaper reported [(24)]:-

> "The Moulivakkam building collapse in Chennai, which claimed 61 migrant workers and injured 27 others, brings under the spotlight lapses in the system. Authorities had no data base on these workers. Activists point out that the migrant workers were denied of their legal rights as none of them were members of the welfare board, which would entitle them to get financial benefits, such as accident relief, pension, creches and other social welfare schemes. Lack of documents like ration cards and voter ID cards as proofs of residence denied them the membership in the welfare board"

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 workmen in a totally different cultural milieu is a major issue. They are mostly suspected in case of occurrence of any crime. They are also innocently taken to other states as labourers but were asked to do illegal things which brings 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 is an engineering student. These five persons were staying in a 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 rest therein. Therefore it is easy for the local police to make allegations against strangers in the locality (migrant workers) and finish the case by encounter. The local populace believes such stories as true since there were no cultural or social contacts developed with those labourers.

Last year there was another case where labourers taken from rural districts of Tiruvannamalai and Dharmapuri for timber work were shot dead by the Andhra Pradesh police which planned encounter killing of alleged smugglers of Red Sander wood from A.P.Forests. There were as many as 20 labourers killed in that encounter and more than 300 persons were arrested and were kept in jail for months together. Due to the initiative by civil rights activists, they were released after being found innocent by the courts in Andhra Pradesh.

A new system in Tamil Nadu, in the form of engaging Camp Coolies must be noted. "Thirumagal Marriage Plan" (otherwise known as 'Sumangali Thittam') was a clever ruse to attract girls below eighteen years. If a girl is sent to work in cotton mills for a contract period of three years, the employer is to give a sum of Rs.30,000/- at the end of the contract period to meet expenditure related to marriage. For their stay in the mill compound and work on a three-shift basis as an apprentice, food will be provided along with a paltry salary. Parole will be given to them for two days per year to meet their parents. Women would not be

disobedient. They would not join Unions. With reduced wage would produce better output. Bearing these in mind the mill owners drew up plans to ignore or circumvent labour laws.

A case was filed in the name of one Vasantha, claiming to be a mill hand, against the prohibition of night shifts for women under Section 66 of the Factories Act,1948. Even in the face of opposition from All India Democratic Women's Association (AIDWA), the Madras High Court declared that provision was ultra vires and unconstitutional [(25)]. In 2007 the number of Camp Coolies in Erode, Coimbatore and Dindugal districts exceeded 40,000. The seventeen districts in West and South Tamil Nadu became a hunting ground for recruiting bonded labour.

The girls floating with dreams of her marriage, were to face twelve hour work schedule, absence of holidays, and sexual harassment and payment frauds at the end of the contract period due to bouncing of cheques. With such complaints snowballing, the labour unions and Women's Organizations urged for the total abolition of Camp Coolie system. The Tamil Nadu government ignored these pleas and only appointed some monitoring panels.

The Centre of Indian Trade Unions (CITU) filed a writ petition before the Madras High Court seeking for a direction to the Government to consider their representation. The said writ petition was dismissed[(26)] by a Division Bench, holding that a roving enquiry cannot be ordered into the matter since the grievance of the Union could be redressed by the concerned labour authorities. The subsequent notification by the state government including those workers under the category of "apprentices" so as to get the statutory minimum wage was challenged by the textile mills. The same was rejected by the Madras High Court [(27)].

Slowly there were a local resistance for the adolescent girls being sent to these mills to work as camp coolies mainly because of the risks involved and also some of the payment made by way of cheques at the end of the contract period were returned without them being honoured. Then the middle men started recruiting people from north-eastern states to work in these mills. There was a news item of 45 women coolies [of which 24 from Chattisgarh and 11 from Assam] getting freed under the Bonded Labour Act from a spinning mill in Erode District, Tamil Nadu.

The question arises whether the present laws have dealt with this issue and whether the laws are effective in removing the problems faced by the migrant labour. The fundamental question is also whether they should be treated separately through a special legislation. Under the law if anyone has a freedom of contract then he is no longer a migrant worker. Neither the Royal Commission on Labour (1929) nor the subsequent Labour Investigating Committee (1946) ever thought of special provisions. At that time the only concern was rural migration and how to keep the labour in the urban areas and prevent them from running off to their villages frequently.

After Independence the issue became slightly different. There was no longer inter- country migration. Only labour going to one part to the other part of the country. The Constitution under Article 19 provides for a movement of any person from one place to another place similar to that of goods being moved freely under Article 304. The issue never drew the minds of administrators and the law makers. The Gajendragadkar Commission (1969) did not have a small chapter on the migrant labour.

After the enactment of the States Re-organisation Act, 1956 providing for formation of linguistic states and when the ISMW Act, 1979 came defining the term migrant worker as one migrating from one state to other state the problem of those workers has also got some linguistic questions. In case of the children of migrant labour who also have a fundamental right under Article 21A to have compulsory and free education until the age of 14 years is there any guarantee for their free education? The Right of Children to Free and Compulsory Education Act, 2009, under Sec. 9 imposes duty on the local authority to provide free and compulsory elementary education to every child including ensuring admission of children of migrant families (Sec. 9(k)). However, the large scale migration of families from North India to South India had seen though some of the children are enrolled in the nearby government / local body schools there is no guarantee that the children will learn their primary education through their mother tongue. In the case of bifurcation of the united Andhra Pradesh into Telengana and Andhra Pradesh as two separate states though a person may be qualifying himself as a ISMW but he may not face linguistic problem, but that may not be the same case in other states.

The problems faced by the inter-state migrant labour cannot be addressed only by a labour legislation.There are other areas like their shelter, civic rights, right to get into civic amenities. Now there is also a security question. In fact I have given in my paper some of the instances where people have simply encountered death, they are suspects and because they have no support from the local population. Already a huge opposition being developed against the North Indian migrant labour coming and occupying posts in government and related agencies thereby depriving the chances of employment for the local Tamil labour. The Karnataka government had brought in a legislation reserving certain types of employment only for the Kannadigas. Therefore any change in law must also take into account overall other factors of security and civic rights of the area. All these things were not addressed because people thought that it was only a labour legislation.

When people from the scheduled areas or Tribals areas go to other states they will lose their status as a Scheduled Tribe. Whatever the special rights they had, they have to forgo those rights. The Supreme Court in some of the cases stated that one cannot carry their caste to a new state. Except in the case of Union Territories in all other areas they lose their caste status or tribal status. These laws do not have any answer at all. A migrant worker may get some public sector employment if tribal status was given to him in the new state. In case of a crime they may get some compensation. We are committing injustice to the constitutional protection given to the Scheduled Castes and Scheduled Tribes. The Supreme Court had ruled that a Scheduled Caste goes from one state to another state does not carry his caste. The SC/ST

(PoA) Act, 1989 which provides for compensation in case of crimes against them will also be denied even if they were victims of caste discrimination.

In case where an inter-state migrant worker works for a long tenure and also has his family living with him whether he will be entitled for exercising his civil rights such as voting etc. And whether he will be entitled to be included for getting family ration of articles from the local government? These questions are not answered in the legislation on hand. Further after his termination of employment by the employer and he returns to his native state, whether he is entitled to sue his employer from his own native state as it will be difficult for him to continue to stay in the migrant state and fight for his employment benefits.

Under the Workman Compensation Act, 1923 where in case of accidents if victims belong to some other place, the Commissioner can transfer the case to the state of origin. So in the Family Court Act, where the women reside, she can sue. Suitable amendments can be made to allow the choice of the place of suing by the migrant worker.

Major trade unions in India do not address these issues. In areas where there are organised trade unions, they do not specially address the issues of the migrant workers. Since the Inter State Migrant Workers Act, 1979 do not address comprehensively all the employment related issues it is necessary for the Parliament to think of the changed scenario and enact special legislation dealing with all aspects of the migrant labour.

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