

SEMINAR  
ON  
LABOUR LAW-II

**MIGRANT LABOUR-  
LAW RELATED TO  
MIGRANT LABOUR**

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## **Introduction<sup>1</sup>**

The dawn of industrialization which on the one hand has contributed towards the progressive movement of the society, however, on the other hand, it has brought magnitude problems with it. The rapid industrialization has also attracted a major chunk of labourers from rural to urban, and thus not only causing the problems for urban growth as well as development, but also for the labourers. Gone are the days of hire and fire. Many labour legislations have been brought out by the policy-makers in order to improve lot of the working class. For instance, workmen's Compensation Legislation, Factories Laws, Wages Laws, Employees' State Insurance Legislation, Industrial Dispute Laws, etc., are some of the pieces of legislation enacted for the care as well as welfare of the workers. Besides, these laws are also a step forward in ameliorating the conditions of the workers, working for the all round welfare of the workers as envisaged by the founding father of the Indian constitution, i.e. prescribing, promoting, and achieving socio-economic justice for the weaker segments of the society.

The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 is one of such piece of legislation aiming at the benefit of the migrant workmen who move from their parental place to migrant place in seeking conducive jobs.

The Inter -state migrant workmen legislation has been enacted to ameliorate the helpless migrant workers, and to regulate the conditions of their employment. This piece of legislation is in the form of a war against poverty ridden migrant workers. The workmen when fail to find the adequate means of livelihood in their home-town, they leave their home-state and go to other states in search of some job which bring them lucrative wages. Besides wages, there may be other compelling circumstances which

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<sup>1</sup> Migrant Workman and The law- By Gurdeep Singh

force them to leave their home-state, namely, scarcity of jobs, exploitation at the hands of the employers, and extremely bad working conditions, etc.

The system of employment of migrant labour is not only a complex one but also an exploitative mostly prevalent in Orissa, Madhya Pradesh, Uttar Pradesh, Bihar etc. The practice of recruitment of migrant labour from different parts of various states is pathetic one, that is, they are recruited through contractors or agents, called *Thekedar or Sardar*. Such workmen are mostly engaged in large construction works. This system lends it to various abuses. Though the *Sardars* at the time of recruitment promise that wages calculated at piece -rate would be settled every month, the promise is seldom kept. Once the worker comes under the clutches of the contractor; he takes him to far off places on payment of railway fare only. The contractor makes the worker to work for unlimited period, without period of rest, under inhuman working conditions, on meager sum of wages. The provisions of various labour laws meant for the welfare and improvement of the workers are violated at the whims of the employers and the contractors and as such they are subjected to various mal-practices .The migrant workers are thus made to suffer both physically and economically hardships of this exploited system.

### **An Historical Overview<sup>2</sup>**

The story of inclusion of Inter- State Migrant Legislation in the statutory book is a tale of dispensing social justice to the migrant workmen. There are two crucial factors responsible for influencing the problem of migrant labours. Firstly, at the international level, when the demand out stripped the ability of Arab State to supply labour because of massive investment programme by the oil producing Arab countries and resulting increase in demand for workers from Asia ,namely, Pakistan, India ,Sri Lanka

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<sup>2</sup> Report of National Commission on Labour, 1969 pg 417

Bangladesh, Thailand, Philippine, Korea and Indonesia. Secondly, South Asian workers accepted job and wages that Arab workers refused to take. However, these factors of migrant labour are not directly or intimately concerned with the problem under investigation, because such problems have all together a different perception at the international arena for which sufficient studies have been conducted by International Labour Organisation. Thirdly, the inter-state migrant workers accepting jobs and wages in other states other than their home states because of extreme poverty and income inequality. the Contract Labour (Regulation and Abolition) Act, 1970, was enacted to regulate the employment of contract labour and providing for the abolition in certain circumstances connected therewith, i.e. to say that there had been growing an agitational attitude for the abolition of employment of contract labour, because the engagement of such labour on contract through a contractor led to deprivation of the contract labour of its due wages under the law as well as various privileges of labour laws. This has been a contentious matter with various labour organizations at social and governmental level, because the employment of contract labour was considered to the detriment of contract labour.

The question of abolition of contract labour has been under the consideration of the government for a long time. The Second Planning Commission while formulating the second five year plan had observed that the major problems relating to contract labour consisted to regulation as well as chanelisation of their working conditions and ensuring their continuous employment. National Commission on Labour, *inter alia*, also recommended to undertake studies to ascertain the extent of the problem of the contract labour, progressive abolition of the system, improvement of service conditions of contract labour where the abolition was not possible. It may be interesting to note that the

National Labour Commission made an indepth study of the problem of the contract labour. The Commission pointed out the issues connected with the contract labour by expressing that the contract labour could not be identified by a definition with other group of persons because of certain constraints, such as casual nature of employment, ignorance and illiteracy, small size of establishments with low capital investment per person employed, scattered nature of establishments, superior strength of the employer operating singly or in combination. The Commission illustrated the categories of contract labour, such as the construction workers, casual labour employed in small scale industries handloom/power loom workers, bidi and cigar workers, employees in shops and commercial establishments, sweeper and scavengent workers in tanneries, tribal labour, and other unprotected as well as unorganised labour. The commission opined that the necessity of abolition of contract labour has long been felt because of the benefits of the labour legislation not reaching to such class of workers owing to the enlargement of the definition of workers in the Factories Act, 1948, The Mines Act ,1952, The Plantation Labour Act, 1951, The Employees' State Insurance Act, 1948. Obviously, since the submission of the Commission report, the policy- makers have been taking various steps to give piece- meal relief to contract labour. The judiciary also discouraged the practice of employment of contract labour since such workers were not getting wages according to law and lack of conducive working conditions. In order to do away with the primitive system of contract labour (a system belonging to *laissez faire* not suited in a social welfare system) the Parliament of India passed a law, namely, the Contract Labour (Regulation and Abolition) Act, 1970, thus streamlining the system of contract labour by giving the benefits of labour laws such as wages Law, Workmen's Compensation Law, Factories Law, Employees State Insurance Law, to such class of workers so that they too could feel secured and protected.

### **Causes Of Migration<sup>3</sup>**

A study on migrant labour highlights various causes for migration. They generally migrate from the state of Bihar, Orissa, Jharkhand and west Bengal. Basically situations of surplus labour arising from scarcity of agricultural land, inequitable land distribution, low agricultural productivity, high population density and the concentration of rural economy almost exclusively on agriculture frequently lead to an increase in out migration. These combinations of factors create a push that is encountered more often in fragile environments. Such as natural calamities like drought, floods, water logging, river bank erosion.

Population explosion, rapid growth of labour forces, high rate of unemployment, uneven growth and development, religious backwardness, poverty, socio-economic and educational backwardness, illiteracy and acute scarcity of livelihood resources are few more factors responsible for migration. In case of voluntary migration of unorganized work force is mostly on account of wage variations. The major causes are as follows-

1. Better employment opportunities and higher wages in economically developed regions and non-availability of employment opportunities and consequent hardship in the under-developed regions.
2. The economic necessity, inter-regional disparity in economic growth due to uneven development and disparity between socio-economic classes is the most important reason in view of National Commission on Rural Labour.
3. Freedom of movement in any part of the territory of India and freedom to pursue any avocation of choice as guaranteed by Article 19 of the Constitution of India

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<sup>3</sup> Labour and Industrial Laws- Dr V.G. Goswami

legally permit people to migrate for better job avenues and on account of these constitutional provisions migration cannot be prohibited, although the migrant workers are hardly aware of these provisions.

4. Despite hardship and exploitation the income of migrant labour may be generally higher than what they would have been able to earn without migration.

### **Migrant Workers-Conceptualisation<sup>4</sup>**

The influx of migrant has occasioned many experts to conduct studies to conceptualize the migration. Primarily, it aims at minimizing malpractices and exploitation of prospective workers by illegal recruiting agents, middlemen, government officialdom and prospective employers. In its simple analogy the migration means the movement of people in search of work with an intention of its permanent settlement, the economic value of their labour in the new place is more than that of their old place. It may mean that people increasingly seeking better employment and income opportunities in the urban non-formal sector which has large number of activities within it for employment generation and egalitarian income distribution. Migration is ordinarily defined as the relatively permanent movement of persons over a significant distance. This is the most general form in defining the nature of migration. In its popular sense the migration includes international, inter-state, and inter-district thus helping the administrators, statistician and demographer and as such as social scientists have been exhibiting the keen interest of concerning the study of movement of people for crossing from one socio-economic system to other

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<sup>4</sup> Encyclopedia of Social Sciences, "Migrant: Migration social aspect."

Migration may involve many forms, such as local moves of little economic significance, temporary population movements in search of seasonal, jobs, permanent shift of individuals and groups from one economic system to another, employment patterns and social change, creation of an unorganized, the skilled readily exploitable labour force. The modern industrial and other urban sectors absorb the influx of migrants thus the developmental processes of industrialization becoming increasingly the centre of labour demand. However, the growing menace of migrants has culminated into the employment, economic and social implication, an impending peril both for the areas of origin and destination.

### **Reason For Migration<sup>5</sup>**

Five broad factors which cause migration, viz.:

- (1) Economic factor;
- (2) Demographic factor;
- (3) Socio-cultural; and Psychological factors;
- (4) Political and Institutional factor; and
- (5) Miscellaneous factor.

Migration flows generally from economically backward or stagnating area to prosperous or dynamic area needs important consideration because economic factors are behind large streams of international, internal, inter and inter-state migration. It may be educative to correlate economic conditions with “pushed theory,” because the push factor or the impelling factor referred to the poor-economic conditions and the resultant economic miseries or lack of opportunity for advancement which push people out of the region in search of livelihood or better opportunities. The international labour organisation has also

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<sup>5</sup> Report on National Commission on Rural Labour, 1991, Vol 1 pg 115

pointed out in its studies that the main push factor causing the workers to leave agriculture being the lower level of income.

The National Commission on Rural Labour has attributed various reasons giving rise to both pull and push factor causing migration to labourers. The report observes that *uneven development* is the most important reason for both pull and push factor. The even development has two major dimensions-one is inter-regional disparity in economic growth and other is the disparity between different socio-economic classes.

Unevenness has its historical roots, trends in economic growth since independence, and this seems to have accelerated the migration phenomenon. Better employment opportunity and higher wages in economically developed regions attract labour while non-availability of employment opportunities and consequent economic hardship in the under-developed or undeveloped regions act as push factors in the migration process. Besides economic reasons there are other social factors which accelerate migration, for instance caste factor is one of the important reason which is the resultant causal factor of oppressive behaviour of the land-lord and high caste peoples towards the poor also seems to be contributory factor in accelerating the process of migration. Bio-Chemical technological development and advanced mechanized devices also appear to force people to move in search of job.

The main thrust of the issues concerning reasons for migration relate to impact on out-put and growth of migrant labour, impact on poverty and income inequality leading to examining the policy perspectives.

Problems effecting migrant workers have been wrestling the policy-makers, because their problems pose a serious challenge to policy-makers. The above mentioned scene of

legal science literature amply demonstrates that the law concerning to improving the lot of migrant workers has not been fool-proof, and that seems to be the obvious reasons for the recurring concern of policy-makers, thinkers, researchers and the adjudicators in several ways. It could be no exaggeration to say that the migrant workmen put a strain on the labour market; represent a potential social problem as unfulfilled expectation result in dissatisfaction and frustration for the migrant workmen but also a source of concern for policy-makers as well as legal scientists. With this objective the National Commission on Rural Labour examined indepth the working of the migrant workmen legislation, plugging loop-holes, and suggesting remedial measures in improving the safety, living and working conditions of migrant labours. The Committee while making an assessment of the inter-State Migrant Workmen Act, *inter alia*, observed that inspite of the fact that migrant workmen who are covered by the Minimum Wages Act, Contract Labour Act, Bonded Labour Act, Inter-State Migrant Workmen Act, Workmen's Compensation Act, and some of the social securities Acts, the migrant labourer worked and lived in de-humanisation conditions. The Committee vehemently pointed out that the difficulties emanate from the weaknesses of the Acts, because those Acts are primarily directed towards organized labour. The Committee as such plugged loop-holes in the law and pointed out the under mentioned shortcomings in the Act and suggested measures to improving the law:

### **A Judicial Novation To Protect The Rights Of Migrant Labour<sup>6</sup>**

The purpose means and end of the law in Benthemian Phrase is, "The greatest happiness of the greatest number of people." This greatest happiness of people could only be achieved if law does not act in *Vacuo*, but in an atmosphere surcharged of social

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<sup>6</sup> Benjamin and Cardozo, " Nature of Judicial Process"

engineering. In recent times, there is a shift from analytical to functional jurisprudence and idealism to realism. The shift from status to contract in human relations has thus germinated a spirit of social welfare. The Courts too have not lagged behind in achieving a state of social welfare and as such keep on striving to serve the cause of poor and weaker sections of the society.

The Supreme Court of India having reconciled to the ends, which mankind has strived to reach, thus made an inroad for the poor and weaker segment of the society to knock at its gate to seek justice through “Public Interest Litigation” or social interest litigation relaxes as well as expands the *locus standi* principle. Public Interest Litigation has enriched not only the Constitutional and Administrative Law Jurisprudence, but also the Labour Law Jurisprudence.

It has now been agreed that Public Interest Litigation serves as a technique to secure the protection of rights of the labour. This class of the society contributes to the economic growth of the society in no way less than the other classes. Legislatively the labour class is bestowed with a number of rights. It has been a constant matter of dispute that this class of society is not only insufficiently paid, but there is continuous violation of their rights, claims and entitlements. In spite of the Abolition of Bonded Labour Act, the bonded labour is rampant in our country and exploitation of the labour class continues. Employers owe certain duties to protect the rights of the labour. The law amply enjoins the employer to sufficiently provide safety measures for the welfare, health and protection of the labour class. The tragedy of “Chasnalla mines”, “M.I.C. gas” leakage in Bhopal pricks the very conscience of the awakened people of the society and bears testimony of the fact that there is least enforcement of these measures. Every tragedy to this class of the society gives rise to serious problems and awakens the Legislators, Administrators

and the Judges to ponder over the problems. The judiciary in India has taken a lead, in protecting and enforcing the right, entitlement, claims of the labour class of introducing the notion of public interest litigation. Here the attempt is not to delineate the nature and scope of Public Interest Litigation, but to study the judicial approach in securing the rights, claims, etc., of hapless section of the society through public or social action litigation

In *Asiad Case*<sup>7</sup> a writ petition was moved in the Supreme Court of India by way of public interest litigation in order to ensure the observance of the provisions of various enactments of Labour Laws such as Employment of Children Act, 1938, Industrial Disputes Act, 1947, Minimum Wages Act, 1948 in relation to the workmen employed in the construction of various projects connected with Asian Games. Here a class of people, i.e. the construction workers were not paid their minimum wages. Some indecent device was adopted by which minimum wages of the workers were reduced. They were just making both ends meet. The extreme poverty and destitution was playing at their backs. Hence they were unable to seek justice through the courts of law. If someone else did not espouse their cause they would have to go without redress and their grievances would have remained unredressed.

The court further observed that the State is under constitutional obligation to see that there is no violation of the fundamental right particularly when it belongs to the weaker section of the community and is unable to wage a legal battle against a strong and powerful opponent who is exploiting him. The Central Government is, therefore, bound to ensure the observance of various social welfare and labour laws enacted by Parliament for the purpose of securing with the Directive Principles of State Policy.

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<sup>7</sup> Peoples Union of Democratic Rights v Union of India AIR 1982 SC 1473

In order to achieve this objective the Supreme Court evolved a new strategy of Public Interest Litigation, so that the magnitude of the problem of the socially and economically weaker workers could be brought before the court either by the poor themselves or by any other person who would be interested in the welfare of this class of the people. The Supreme Court entertained the writ petition for the benefit of group of persons, who were the victims of exploitation and oppression and were denied their Constitutional and legal rights.

Justice P.N. Bhagwati observed that the time has now come when the Courts must become the Courts for the poor and struggling masses of this country. They must shed their character as upholders of the established order and *status quo*. They must be sensitised to the need of doing justice to the large masses of people to whom justice has been denied by a cruel and heartless society for generations. It is through Public Interest Litigation that the problems of the poor are now coming to the forefront and the entire theatre of the law is changing. It holds out great possibilities for the future.

While recognizing the importance of comprehensive and dynamic legal aid programme for this group of the society, Justice Bhagwati reminded that time is ripe for us to study the human rights declared and defined by the United Nations and compare them with the rights available in practice and secured by the law of our country. Justice Bhagwati, in no way, allowed the violation of any of the provisions of Labour Laws. He therefore, maintained that if violations of Labour Laws are going to be punished only by meager fine it would be impossible to ensure the observance of the labour laws and labour laws would be reduced to nullity. They would remain merely paper-tiger without any teeth and claws. Violation of labour law must be viewed with strictness and whenever

any violations of labour laws are established the errant employer should be punished by imposing adequate punishment.

In *Salal Project's case*<sup>8</sup> a relief by way of Public Interest Litigation was sought for labourers employed by contractors and sub-contractors of government projects regarding implementation of labour welfare legislations for the benefit of these deprived persons. It was an interesting case involving provisions of Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, Contract Labour (Regulation and Abolition) Act, 1970, Employment of Children Act, 1938, Minimum Wage Act, 1948 and Bonded Labour System (Abolition) Act, 1976. The labourers were not provided with canteen and rest room facilities. There were no adequate washing facilities provided at the work-site, though there was a clear obligation on contractors and sub-contractors to do so. Some minors, i.e. children were found to have been employed on the project site in violation of Article 24 of the Constitution which forbids that no child below the age of 14 years be employed in a hazardous work. Mr. Justice Bhagwati, while delivering the judgment, vigorously emphasised the necessity of complying with the provisions of Contract Labour Act. The learned Judge further reiterated that welfare amenities required to be provided under these statutes to be made available to the workmen employed on the project. There is no denying of the fact, that so long as the poverty continues to exist in India, it is difficult to absolutely eradicate the child labour from our society. However, Justice Bhagwati rendered social justice by giving forceful direction, that "The Central Government should take care to see that necessary facilities for schooling should be provided to the children of construction workers whenever any construction project was taken up which was likely to last for some time." This part of the judgment ever

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<sup>8</sup> Labourers working on salal hydro electric project v State of Jammu and Kashmir 1984 (3) Sc 538

pronounced indicated that how the deprived populace of the society could be educated. Education is not to be sought for that section of the society who could afford to pursue the learning process. This part of the judgment further shows that how the highest court of the land is concerned about the mass eradication of illiteracy. It is now up to the executors of the education policy to see to what extent they can gear up their machinery in eradicating the mass illiteracy from the society. It is a question of motivation and persuasion.

Justice Bhagwati purposefully directed the Central Government to tighten up its inspection machinery and to ensure that close and detailed inspections are carried out by fairly senior inspection staff at frequent intervals, because unless there is Constant Vigilant, scrutiny, the observance of labour laws which the Court has been able to secure as a result of its judicial intervention may again become slack and the construction workers who constitute by and large an unorganized sector of the labour force may not be able to bring such non-observance of labour laws to the notice of the court.

In another significant case of *Bandhua Mukti Morcha*<sup>9</sup>, The Supreme court did not hesitate to treat a letter addressed to it by a person acting *probona public* as a writ petition by a way of public interest litigation for the enforcement of fundamental right of certain workmen living in bondage and under inhuman living condition. These labourers could not approach the court for relief on account of poverty or disability or socially and economically disadvantaged position.

In *Neeraj Chaudhry v/s State of Madhya Pradesh*, AIR 1984 SC 1099, this case is not directly related to migrant workmen law but concerns the bounded labour Abolition Act,1976. However, the trinity of bounded labour, migrant labour concerns the weaker

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<sup>9</sup> *Bandhua Mukti Morcha v Union of India* AIR 1984 SC 802

segment of the society, contract and inter-state migrant workmen will be treated as bounded labour.

A close scrutiny of the above said cases demonstrate that the Apex Court has taken an extremely serious note of the exploitation of the migrant workers on one hand and non-observance of various labour laws on the other hand. In these cases the Supreme Court through Public Interest Litigation issued directions to the concerned authorities and the contractors for the exploitation of the migrant workers as well as gearing up the governmental machinery to observe and promote the labour laws meant for the welfare of the migrant workers.

### **Role of State Governments<sup>10</sup>**

1. Appointment of inspectors to oversee implementation of this act.
2. Appointment of registration officers to grant and revoke registration of contractors / principal employers / establishments.
3. Appointment of licensing officers to grant, suspend and revoke licenses to contractors / principal employers / establishments
4. Making rules for carrying out the purposes of this Act subject to the condition of previous publication
5. Entertaining appeals from the aggrieved parties and disposal of the same as per this Act

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<sup>10</sup> [www. Google .com](http://www.Google.com)

## **Awareness Of Migrant Workmen, Principal Employers, Contractors And Inspectors About The Law<sup>11</sup>**

It is an universal acknowledged legal truth that ignorance of law is no excuse (*ignorantia juris non excusat*) i.e., every prudent man of the society is supposed to know the law of the land which concerns about his right, life, liberty, duty, obligation, powers, privileges and immunities. The workmen, the employers engaging such workmen and the law enforcement agencies (Inspectors), it is expected, are required to know the law (Inter-State Migrant Workmen Act) with which they interact. Awareness of law for all such classes of persons is imperative because one is the beneficiary; the order is the giver of the benefits as well as the protector of the interest and entitlements.

The law concerning the inter-State migrant workmen emanates from social policy enjoined in the Constitution of India.

It has been said that law approximates to justice. In democratic state of society, the conception of administration of justice is based on the rule of law, which, as conceived by modern jurists, is dynamic and includes within its import social justice.

It is the function and the duty of the state, inter-alia, to secure social order for the promotion of the welfare of the people, to direct its policy that the citizens have the right to adequate means of livelihood; that the ownership and the control of material resources of the community are so distributed as best to subserve the common good; that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment; that the health and strength of the workers and the tender age of children are not abused and the citizens are not forced by economic

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<sup>11</sup> Constitution of India -Art 38

necessity to enter avocation unsuited to their age or strength and that the childhood and youth are protected against exploitation and against moral or material abandonment; to endeavour by suitable legislation or economic organisation to all workers, a living wage, condition worth ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities.

These functions and duties of the state have given rise to concept of social justice. The concept of social justice is dynamic. In dispensing social justice apart from interest of the contesting parties, the general and over-all interest of the society as a whole have to be taken into consideration so as to prevent pampering of one group at the cost of the rest, specially in matter of claim of labour. The principle that the employer and the employee are so inter-related as well as dependent on each other that it is in the interest of each that other should survive; it is in the interest of society that both should be kept functioning in harmony with each other. In time of stress the workman is at greater disadvantage. He has not as much to fall back on as his employer; it is for the good of both that the employer should be made to help him to keep himself alive and fit to work.

Keeping in view the above said concept of social justice to protecting the right and interest of labour class numerous legislations have been passed for regulating the terms and conditions of employment between employer and workmen to avoid the exploitation of working class, specially the Contract labour. For some time in the past there had been a growing agitation for the abolition of employment of contract labour since it was felt that the execution of the work on contract through contractor, who as an employer employed labour, was primarily to deprive the labour of its due wages and various privileges under the labour laws. In view of the exploitation of contract labour the question of abolition

and regulation of contract labour has been haunting the attention of various labour organizations.

The National Labour Commission also dealt with the problem of contract labour. It found that contract labour is disorganized; that the system works to the disadvantage of the contract labour and to the advantage of the employer. The necessity of abolition of contract labour has long been felt. Consequently, in the year 1970 a comprehensive legislation, the Contracts Labour (Regulation and Abolition) Act, 1970 was passed. Its main feature is to regulate the employment of contract labour in certain establishments and to provide for the abolition thereof in certain circumstances. But the provisions of Act were not adequate to protect the interest of the workmen, who migrated from the native state to other state in search of their livelihood, because of the violation of labour law that apply to contract labour and migrant law. Before thinking a way of ensuring protection for the migrant-*cum*- contract labour it is imperative to understand the exact situations who contribute to misery of migrant-*cum*-contract labour and deeds of the employers engaging such blue collar workers. The system of employment of migrant labour is not only a complex one but also an exploitative. The practice of recruitment of migrant labour from different parts of states is pathetic one. They are recruited through contractor or agent called *Thekedar* or *Sardars* are generally engaged in construction works. Once the worker comes under the clutches of the contractor, he makes them to work for unlimited period of rest, under inhuman working conditions on meager wages. The provisions of labour laws are violated at the whim of the employers and contractors. In order to overcome the deteriorating conditions of the migrant workmen it was but expedient to pass a law namely Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979. stated this Act requires that the

employers and the contractors must observe the welfare measures, working conditions, safety measures, wage protection, the inspectors must come to inspect the establishments falling within the purview of the Act. In recent times it has been seen that the negative attitude in the implementation of the legislation has culminated into series of cases in as much as the Apex Court of the country has taken a serious note of apathy of the employers towards the migrant workmen. Even the highest court of the land has been grappled with a serious question of exploitation of migrant workers in series of cases namely *Asiad case*; *Bandhua Mukti Morcha's case* and *Salal Hydro Electric Project case*. The Apex Court, too, has taken a serious note of exploitation of the migrant workmen because of their poverty, illiteracy, ignorance of their right, socially and economically backwardness on the one hands, and non-observance of labour laws on the other hand.

The inter-State migrant workmen are generally illiterate, unorganized and have normally to work under extremely adverse conditions. Violations of labour laws that apply to migrant workers are all too common. In many cases the principal employer is Government or public sector company and the private sector. The guardians of law, namely, the labour departments are also not known for their zeal in detecting and prosecuting contractors who break the labour laws which are meant to protect contract labour. How does one prevent such things from happening? This is possible if they are made aware of their rights and entitlements under laws, thus, the migrant workmen are administratively and legislatively protected against the exploitation

Apart from other obligations of the contractors, he is duty-bound to issue to every inter-State migrant workmen a pass-book affixed with a pass-port size photograph of the workmen. The pass-book should contain the following particulars of the workmen:

- (a) The name and place of the establishment wherein the workman is employed,

- (b) The period of employment,
- (c) The proposed rate and modes of payment of wages,
- (d) Displacement allowance payable,
- (e) The return fare to the workman on the expiry of the period of employment and such other contingencies may be specified in contract of employment,
- (f) Deduction made, and
- (g) Such other particular as may be prescribed.

that following additional particulars shall also be indicated in the pass-book:

- (a) The date of recruitment,
- (b) The date of employment,
- (c) Total attendance/unit if work done, total wages earned/deduction if any made/net amount paid and signature of the contractor or his authorised agent, and
- (d) Name and address of next kin of the migrant workmen.

From these statutory provisions it is apparent that contractor is bound to maintain a proper record of the workmen, he has to issue a pass-book; and to furnish all the necessary information of migrant workmen as per his personal record in the shape of pass-book. It is the duty of the Inspector to verify whether the contractor has complied with his duty.

### **Awareness of Law by the Inspector<sup>12</sup>**

The Inter-State Migrant Workmen Act, 1979 make a provision for the appointment of the Inspector for carrying out the provisions of the Act. The appropriate Government may by notification in the official gazette appoint such person as it thinks fit to be inspector for the purpose of this Act and define the local limits within which he shall exercise his power under the Act.

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<sup>12</sup> Migrant Workman and the Law By Gurdeep Singh

The Inspector is vested with the powers to enter the premises of any establishment or place where the inter-State migrant workmen have been employed for the purpose of satisfying himself whether the provisions of the Act in relation to payment of wages, conditions of service or other facilities to be provided to such workmen have been complied with or not. For this purpose he can examine any register or record of notice required to be kept or exhibited vide the provisions of the Act and can also ask for the production thereof for inspection. The inspector can also examine any person in such premises or place for the purpose of determining whether such a person is an inter-State migrant workman.

### **Recruitment Process, Wages and Welfare Measures Pertaining to Migrant Workers<sup>13</sup>**

Recruitment is one of the most significant steps in the employment of industrial labour. In fact, it is the first step in the total staffing process. The ultimate success or failure of employment depends on the method of recruitment. Proper recruitment is a source for the increase of production and efficiency. There was a time when the industries in India faced considerable obstacle in finding the necessary labour force, because the workers were reluctant to leave their villages and work in distant towns or plantations under strange environment. Besides, the working conditions in factories were also not conducive. Therefore, in the early days of industry there was a considerable scarcity of labour supply.

Further, the workers were treated as slaves. There were no specific laws for regulating the relation between the employers and the workmen. The conditions of employment were governed by contract either express or implied between the employees and their

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<sup>13</sup> Industrial Law- By P. L. Malik

employers in different undertaking. In many cases these conditions were not well defined and obviously suffered from doubt and ambiguity and resulted in industrial disputes and unrest among the workers. Earlier in 1940, the *Bombay Textile Labour Enquiry Committee* had commented: There is no fear which haunts an industrial worker more constantly than the fear of losing job as there is nothing which he proves more than economic security.

The main recruitment is done through the intermediaries. Every organized as well as unorganized industry depend upon these intermediaries, who keep their constant contact with the labour in the villages and bring them to the cities, under this system, the intermediaries keep a vital link between workers and employers and assure the employers for permanent supply of labour. These intermediaries in different places and in different industries are known by different names, such as *Mukadam*, *Choudhary*, *Khatadar*, *Sardar*, etc. But the recruitment of labour through intermediaries has been always fraught with serious evil. The evil varies in intensity from industry to industry and centre to center. In many cases a smaller regular payment has also to be made out of each month wages. In other cases workers have to supply the jobber with drinks or other periodical offering in kind. The jobber himself has at times to subsidise the head jobber and it is said that even members of the supervising staff sometimes receive a share of the bribe. Besides, there have been many cases when these jobbers have misrepresented the workers and have been responsible for many conflicts between the workers and the employer. Moreover, they recruit not necessarily the most efficient men, but those who are willing to pay them the largest commission or in whom they are otherwise interested. The jobbers always tries to create vacancies in order to fill his pocket through fresh recruits.

The system of recruitment through jobbers has been recognised by all as very unsatisfactory and undesirable and efforts have been made everywhere to reduce the powers of the jobber. But the system could not be abolished altogether and even the Labour Investigation Committee pointed out that it was not certain that Indian Labour had yet reached the stage of development and mobility where the intermediary for recruitment could easily be dispensed with. In the absence of alternative agencies the jobber came to be accepted as an inevitable factor. The system has got some advantages also. The jobber kept close touch with the recruiting district and villages and his understanding and appreciation of the habits, hopes and fears of the workers render his position more advantageous as compared to direct agencies of recruitment. However, to admit the inevitability of the jobber does not mean that step should not be taken on an increasing scale to regularize the system of recruitment for industries and put some method into it for regulation of the relation between the employers and the workmen. Further, the emergence of the concept of welfare state has totally changed the complexion of employers and employees relation as it implies an end to exploitation and to ensure social justice to both employers and employees and advance the progress of industry by bringing about harmony and cordial relationship between the parties. As the social and economic upliftment of the labour is important for securing industrial peace which is essential to increase the national productivity. Due to the improvement of working conditions, security of service, development of transport and communication and rapid growth in the population now there is a steady increase in the volume of free labour force which can be directly recruited by the employers at the place of employment. However, the migratory character of Indian labour as well as its scarcity in the early days of industries led to the haphazard growth of the system of recruitment. India's industrial labour is directly drawn from rural areas and labourer's accounts of various reasons

maintain their relation with their villages. Hence, the migratory character of labour still has a direct impact on the system of recruitment. This is a reason why there has been no application of any scientific principles of labour administration and labour management.

There are various methods of recruitment of industrial labour in different industries. In India labour is almost supplied by intermediaries. Every organized and unorganized industry depend upon these intermediaries. In order to facilitate the movement of the migratory workmen numbers of legislations have been passed and the Inter-State Migrant Workmen Legislation, 1979, is the recent one. The Act, in order to encourage the migration of the workmen and to facilitate their free movement out of their native place provides a number of attractive concessions for the migrant workers.

For the smooth functioning and to protect the interest of the migrant workmen, even at the time of their recruitment, a duty has been casts upon the contractor to pay journey allowance of a sum not less than the fare from the place of residence of the inter-state migrant workman in his state to the place of work in other state both for the outward and return journey and such workman shall be entitled to wages during the period of such journey as if he were on duty. The object is to facilitate the migrant workmen in the initial stage for his smooth journey to reach the place of his employment. Even the International Labour Organisation in its thirty-eighth session on 1<sup>st</sup> June 1955 has made certain recommendations concerning the protection of the migrant workmen in under-developed countries and territories and one of the recommendations is regarding the protection of migrant workmen and their families during their outward and return journey prior to the period of their employment.

## **Welfare<sup>14</sup>**

The concept of welfare is necessarily dynamic bearing different interpretation from country to country and from time to time and even in the same country according to its value system, social institution, degree of industrialization and general level of social and economic development. Even within one country, its content may be different from region to region. According to pre-Independence notion, it could cover apart from known amenities item like housing, medical and educational facilities, cooperative societies holidays with pay and social insurance measure. The Directive Principles of State Policy in our Constitution generally refer to the promotion of welfare of the people.

A resolution adopted by the International Labour Conference at its 39<sup>th</sup> Session in June 1956 has enumerated some of these services and amenities. These include: (i) feeding facilities in or near the undertaking, (ii) rest and recreation facilities; and (iii) transportation to and from work where ordinary public transport is inadequate.

The welfare work in India is still considered below the standard set-up in other countries. It has come to stay and is bound to make rapid progress in the years to come, especially when the Indian Republic is wedded to the ideal of a welfare state and a socialist pattern of society the welfare of the workers in India should be on priority bases.

## **Rest Room**

Generally the rest rooms are provided to facilitate the workers so that they may take rest and relax during the break in their working hours. The National Commission of Labour a long back made a scathing observation in this perspective and the apathy of the employers to providing rest rooms for their workers. But rest shelters were provided by

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<sup>14</sup> Migrant Workman and Law By Gurdeep Singh

only a small number of concerns and a larger unit had set-up rest shelter or dining shed, but in small unit, they were more an exception than the rule. Where rest shelters were provided their structure usually consisted of brick walls and roofs of corrugated iron sheets. In number of cases the walls were *kutchha*. None of the factory seemed to have pre-planned erection of rest shelter. They were put up at a place convenient to the employers. The sheds could not generally accommodate all or even most of the workers. More often than not they were dirty and unclean and the workers preferred the shade of tree to them.

The rules vide the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, provide for the maintenance of the rest rooms for the migrant workmen. The rule imposed an obligation on the contractor to provide and maintain rest rooms or other alternative accommodation within fifteen days of the commencement of the employment of the migrant workmen in case of the new establishment or within fifteen days of coming into force of the rules in case of existing establishment, in every place, where migrant workmen are required to halt at night in connection with the working of the establishment and in which employment of the migrant workmen is likely to continue for three months or more. For the female migrant workmen separate rooms shall be provided. The rest rooms or other alternative accommodation shall be of the dimension of atleast a floor area of 1.1 square meters for each person and shall be at the convenient distance from the establishment and shall have the adequate facility of drinking water. Provisions should also be made for adequate ventilation for circulation of fresh air, so that reasonable conditions of comfort to the workers be provided to prevent the injury to the health. The room should be sufficiently enlightened. Keeping in view the comforts and facilities to be provided to the migrant workmen for their rest comforts in the rest rooms.

### **Recreation, Leisure and Deviating Tendencies**

As regard recreational facilities as pointed out by the Labour Investigation Committee, the value and importance of entertainments, as a means of relieve the monotony and drudgery of working long hours in the factories, or. Mines and to introduce an element of joy and relief as well as to import instruction and education to the ignorant workers, can't be overs estimated. The average industrial workers work in an atmosphere of dust, noise and heat, and live in terrible over-crowded and insanitary dwellings which are no better than dark dungeons. The workers who come from the villages find it difficult to adjust themselves to urban or factory environments. The homes of most of the workers employed are often distant from their place of work and they are away from their relatives and friends for months together. They are deprived of normal social life with the consequences that many of them fall prey to vices. No measure to raise the standard of the life of the workers can succeed, unless and until they are weaned away from vice and diversions are provided which can occupy their spare time in healthy atmosphere. The provision for recreational and culture facilities which includes various types of indoor and out-door games, radio listening, excursion, lectures, concerts cinema shows, reading room and libraries, theatrical performances, holiday home, etc.

In the opinion of Labour Investigation Committee entertainment can only be regarded as voluntary activity on the part of the employer and no legal effect can be given to it. The cost involved in providing entertainments is not much while their healthy effects on the efficiency of the psychology of the workers are very great.

**Accommodation**

The place of housing is very significant amongst the basic necessities of life. It comes next to food and clothing. Therefore, in all advanced countries much attention has been devoted to the study of the housing problem. It is unfortunate that India is still far behind in this respect. Hence, with few exceptions, housing is generally considered to be more or less a mere accumulation of bricks and mud in a symmetrical form. But the concept of modern housing is quite different from it. A modern house is built for efficient use. It is planned and non-speculative and provides minimum amenities of life such as adequate privacy, sunlight, windows, cross-ventilation, isolation in times like maternity and sickness and sufficient place for children's play. The modern conception of housing is different from the mere conglomeration of buildings. It seeks to achieve the purpose of transforming the physical environment in order to create suitable conditions for healthy living. From this point of view, the housing conditions of industrial workers are very appalling.

**Education Facilities for the Children of Migrant Workmen.**

The provision of educational facilities for the workers' children is a social service of great importance in India where illiteracy is widely prevalent. Lack of education among the masses is at the root of many troubles confronting India. Without a good foundation of general education and removal of illiteracy we can't achieve the national goal. The education should be imparted at the grass-roots level, because the children are the backbone of the country. Even the Royal Commission on Labour recommended apart from the education of the industrial workers, the employers should try to develop the education of their workers' children in their factories school. In order to make children useful citizens and to discipline their mind and develop their thinking power and talent

potentialities, the importance of educational facilities is very great indeed. Generally the responsibility of providing the education to the masses, including the children should be that of the State Government. Even the Apex Court has also pointed out in its judgment that the Central Government should take care to see that necessary facilities for schooling were provided to the children of construction workers whenever any construction project was taken up which was likely to last for some time. If some employers actually provide such facilities, they must be considered as merely gratis. In the light of the above parameters a data has been collected to see whether any educational facility has been provided for the school going children of the migrant workmen.

### **Social Security: Incidence of Accident and Compensation Claims**

The citizen of democracy should be guaranteed all of right enough food to maintain him in health .He should be assured a minimum standard of shelter, clothing and fuel. He should be given full and equal opportunities of education .He should have leisure and facilities for enjoying it. He should be secured against the risk of unemployment, ill-health and old age. Above all the presence of children should not be allowed to bring with it misery for the parents deprivation for the children and poverty for all in here in the individual as his citizen right.

### **Sickness Benefit**

Sickness is another important risk to be insured against. Insurance against sickness is as feasible as insurance against accident. In India where sickness and disease are rampant the need for this kind of insurance is all the more pressing and desirable. The question of instituting a health insurance scheme received the attention of Government of India in 1927 when the International Labour Conference adopted two conventions regarding the

death insurance of the workers in industry, commerce and agriculture. The Labour Commission on Labour also discussed this question in some detail in their report and recommended that a tentative scheme of health insurance should be adopted after collecting statistical data regarding sickness incidence. The Government of India at this juncture was not in favour of any such scheme, and the reasons advanced were financial difficulties, migratory character of the workers and their lack of contributory power. However, the Government addressed the provincial governments on the subject, but there was not much response from them also. However, after considerable correspondence and discussion with the provincial governments, the Government of India appointed in March 1943, an officer on special duty, (Prof. B. P. Adarkar) to work out the scheme of health insurance for industrial workers. He submitted his report in August 1944. He recommended a compulsory and contributory health insurance scheme for workers in perennial factories, in three groups of industries namely; textile engineering, minerals and metal. The contribution to be paid by the employers and the workers were laid down with an alternative recommendation of the state contribution. The scheme was received in 1945 by two experts of the I.L.O. Messers M. Stack and B. Rao who suggested certain modifications. Though, in general, they agreed with the fundamental principles enunciated by Prof. B P Adarkar.

The Maternity Benefit Act is intended to achieve the objective of doing social justice to women workers and to make up her dissipated energy, nurse her child, preserve her efficiency as a worker and maintain the level of her previous efficiency. The benefits of the Act are also extended to migrant workmen working in different establishments. In view of the provisions of the Act, data have been collected to see whether the migrant workmen workers enjoy these benefits. However, apparently both the migrant male and

female workers totally denied the existence of any; sickness and maternity benefit. The migrant women workers are neither given any maternity leave nor any benefit is provided nor any extra payment is made for the period of female workers keep away during pre-natal and post-natal period. The migrant female workers are not even given the wages for pre-natal and post natal period. The plight of these migrant female workers is miserable inasmuch as that they remain silent spectators to receiving such benefits.

### **Incidence of Accident**

Workers need protection against industrial accidents which occur in every country. With increasing use of machinery and mechanical power. In organized industry, the number of industrial accidents have become common in India. Provisions for the safety device to be used in Industrial establishments have been included in various Labour Laws, for example, fencing of machine, safety poster, fire extinguishers, etc. but inspite of all these accidents do occur partly due to absence of adequate safety guards against dangerous machinery and partly due to the carelessness of the workers, resulting from miscalculation or wrong judgment, a deliberate failure to take the necessary precaution or ignorance of the risk involved or overwork or fatigue. There is always some possibility of accident when the machines are so huge and complicated and the production speed is so tremendously fast. Accident means death or permanent or temporary disablement and, therefore, waste of economic resources and human energy and subsequent suffering of the workers and their dependants. Hence, a need was felt for providing a security to the workers in cases of accident, resulting in disablement or death of the workman. But before the enactment of Workmen's Compensation Legislation, worker's right to secure redress for industrial injury and wage loss only depended upon his bringing a case against his employer to court and winning it.

The Workman's Compensation Legislation has been enacted to heal the industrial wounds of the workers. The law takes care that the wounds of such workers may not go unnoticed as well as unredressed. Apart from this the Inter-State Migrant Workmen Legislation has also made it obligatory on the contractor to inform the concerned authority of both the state and next of the kin of the migrant workman.

### **Protection given to Unorganised labourers by the Constitution of India 1950<sup>15</sup>**

The **Preamble** of our constitution says that We, The people of India, having solemnly resolved to constitute India into of Sovereign Socialist Secular Democratic Republic and to secure all its citizens.

All laws in force in the territory of India immediately before the commencement of this Constitution, insofar as they are inconsistent with the provision of this part, shall to the extent of such inconsistency, be void.

**Article 13-** The State shall not make any law which takes away or abridges the rights conferred by this part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

**Article 14-** Our constitution provides for equality before the law and says that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

**Article 15-** Our Constitution prohibits the discrimination on grounds of religion, race, caste, sex or place of birth.

**Article 15(3)-** nothing in this Article shall prevent the state from making any special provision for women and children.

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<sup>15</sup> Legal Protection to Unorganised Labour- Abdul Majid pg 160

**Article 15(4)**- nothing in this Article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and Schedules Tribes.

**Article 16**- Equality of opportunity in matters of public employment is guaranteed.

**Article 17**- Our grand norm further says that “untouchability” is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of “untouchability” shall be an offence punishable in accordance with law.

**Article 19**- Various freedoms have been provided by our constitution to all irrespective of their status. Therefore, the unorganized workers are also entitled to the freedoms:

- (a) To freedom of speech and expression;
- (b) To assemble peacefully and without arms;
- (c) To form association or unions;
- (d) To move freely throughout the territory of India;
- (e) To reside and settle in any part of the territory of India;
- (f) To acquire, hold and dispose of property ; and
- (g) To practice any profession, or to carry on any occupation, trade or business.

**Article 21**- Our constitution safeguards very valuable right to life and personal liberty of the citizens of India including unorganized labourers. It says that no person shall be deprived of his life or personal liberty except according to procedure established by law.

Hon’ble Supreme Court of India has widened the scope of Art. 21 and created new constitutional safeguards to unrecognized labourers. In *Maneka Gandhi’s case*<sup>16</sup> the Court held that the right to `live` is not merely confined to physical existence but it includes within its ambit the right to live with human dignity.

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<sup>16</sup> AIR 1978 SC 597

The Supreme Court in *People Union for Democratic Rights v. Union of India*,<sup>17</sup> held that non-payment of minimum wages to the workers employed in various Asiad Projects in Delhi was a denial to them of their right to live with basic human dignity and violative of Art. 21 of the Constitution.

In *Olga Tellis v. Bombay Municipal Corporation*,<sup>18</sup> popularly known as the 'pavement dwellers' case' a five judge bench of the Court has finally ruled that the word 'life' in Art. 21 include the 'right of livelihood' also.

**Rights Of Unorganised Labourers Against Exploitations: Article 23** of the Constitution prohibits traffic in human being and begar and other similar forms of forced labour. The second part of this Article declares that any contravention of this provision shall be an offence punishable in accordance with law. It protects the individual not only against the State but also against private citizen. It is to be noted that the protection of this Article is available to both citizen as well as non-citizens.

In *Deena v. Union of India*,<sup>19</sup> Supreme Court observed that it was held that labour taken from prisoners without paying proper remuneration was "forced labour" and violative of Art. 23 of the Constitution. The prisoners are entitled to payment of reasonable wages for the work taken from them and the Court is under duty to enforce their claims.

In *Bandhua Mukti Morcha v. Union of India*,<sup>20</sup> Article 23 which prohibits 'forced labour' in any form. Various State laws make it an offence to compel a person to work against his will or without payment of wages.

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<sup>17</sup> AIR 1982 SC 1473

<sup>18</sup> AIR 1986 SC 180

<sup>19</sup> AIR 1983 SC 1134

<sup>20</sup> AIR 1984 SC 802

## Conclusions and Suggestions

The socio-legal study of Inter -State Migrant Workmen Legislation reveals that though the industrialization has contributed towards the progressive movement of the society, yet it has its inbuilt problems. This law has been enacted as a war against poverty ridden migrant workmen when they leave their home-state and go to the migrant state in search of some job which may bring lucrative wages. Besides wages, the law also provides certain safeguards to the migrant workmen, namely, security of job, non-exploitation at the hand of the employers/contractors, conducive working conditions, etc. at the hands of the employers /contractors, conducive working conditions.

At the international level the migrant workmen have altogether a different perception for which a care has been taken by International Labour Organisation. The Contract Labour could not take care of inter-State migrant workmen satisfactorily. The recommendations of National Commission on Labour are pointers in this perspective. Therefore, the policy-makers have been grappled with a serious question as to how to get rid of the migrant workmen of the intervention of the *middlemen* or *contractors* or *Thekedar* or *Khatadars*. Examples of such contract labour and their misuse and abuse have been in the air particularly from the tribal areas of Bihar, Orissa and Madhya Pradesh. Consequently, the Inter-State Migrant Workmen Legislation was born to nourish the inter-State migrant workmen by providing an effective protective umbrella against exploitation. Thus, the Inter-State Migrant Workmen Legislation strives to serve the cause of poor and weaker section of the Indian society called migrant workmen.

Many experts have endeavoured to conceptualize the expression migration. Primarily, it aims at minimizing mal-practices and exploitation of prospective workers by illegal recruiting agents, middlemen, government officialdom and prospective employers.

It may mean the movement of people in search of work with an intention on its permanent settlement; the economic value of their labour in the new place is more than that of their old place. It may mean that people increasingly seeking better employment and income opportunities in the urban non-formal sector which has large number of activities within it for employment generation and egalitarian income distribution. Migrations involve push factors as well as pull factors. These two factors reflect to reveal reasons for migration which may be applied in search of employment from home-state to migrant-state where the number of sectors such as railway track expansion, construction work, hydro-electric projects, buildings construction, roads construction, etc. The chief casual factors for migration are economic factors, demographic factors, socio-cultural and psychological factors, political and institutional factors and miscellaneous factors. Migration flows are generally pronounced from economically backward or stagnating area to prosperous area or dynamic area, because economic factors are behind long streams of inter-state migration.

The Inter-State Migrant Workmen Legislation possess the various dimensions of the problem concerning the migrant workmen. Both the legal scientist as well as social scientists have explored the dimensions of such problems mostly relating to socio-economic issues policy perspective, administrative processes, legal aspects of migrant workmen.

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