
A Study on the Socio-legal Status of Migrant Labour in India

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Abstract

Migration is ordinarily defined as the relatively permanent movement of persons over a significant distance. Migration being movement of human beings in pursuit of certain cherished objects like better employment, better wages and better quality of life, a social and economic phenomenon which is occurring as a normal and natural process. Migration becomes objectionable only when it leads to exploitation culminating in human misery and deprivation of the irreducible barest minimum to which every worker as a human being and a citizen is entitled. This paper is based upon the argument that these migrant labours should be given a socio-legal status. Besides, this paper makes an attempt to suggest some reforms which is the main concern of the present scenario.

Keywords: Migrant Labour, Socio-legal status, Constitution of India, Reforms

MEANING OF MIGRANT LABOUR

In an increasingly globalized and shrinking world, migration of human beings is becoming more and more common. Migration is a major demographic process that has been an integral and salient feature of human history since time immemorial.¹ It has been an important means by which human civilization has spread out, enriching cultures, disseminating ideas and generating social, political and economic changes at the places of origin and of destination. In the major part of the world unequal distribution of population resources and opportunities causes excess population mobile from depressed areas to communities with growing opportunities and the persons with special qualifications to the sites where their talents are needed, it will increase both individual prosperity and prosperity of the community or nation as a whole. Migration is normally treated as an economic phenomenon though non-economic factors also have some influence. Migration means settlement or shifting of individuals or group of people from one place to another. Labour migration has been an integral and vital part of human development.²

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¹ Surjit Singh, "Migration in India: Some Evidence from States", Kanishka Publishers, New Delhi, 2003, p.214

² Dash C.R and Tripathy S.N, "Migrant Labour In India", Discovery Publishing House, New Delhi, 2013, p.55

REASONS FOR MIGRATION

There are many reason of migration in India. 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 in encountered more often in fragile environments. Such as natural calamities like drought, floods, water logging, river bank erosion.³ 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 for labour migration are as follows:

- (i) Better employment opportunities and higher wages in economically developed regions and non-availability of employment opportunities and consequent hardship in the underdeveloped regions.
- (ii) The economic necessity, inter-regional disparity in economic growth due to uneven development and disparity between socioeconomic classes is the most important reason in view of National Commission on Rural Labour.
- (iii) 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 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.

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

CAUSES FOR LABOUR MIGRATION

The main causes of migration are divided into five groups i.e. economic, social, psychological, political and natural causes. It was found that poverty, low employment at native place and more employment and higher wages in Punjab and Maharashtra, Delhi etc. were the prime factors for their migration. Other equally important economic causes of migration were indebtedness, smaller land holdings and low incomes in village. So, to escape

³ Dr. V.G. Goswami, "Labour and Industrial Laws", Central Law Agency, Allahabad, 1996, p.34

⁴ Breman Jan, "On bondage old and new", The Indian Journal of Labour Economics, Vol.51, No.1, Jan- March, 2018, pp.48-52

from economic hardships in their native villager, the respondents migrated to the urban areas in many states.

KINDS OF MIGRATION

Kinds of migration can be divided into several types of migration. The bases are cultural levels and activities, space distance and territory, temporal dimensions, reasons and purposes unskilled and skilled and willingness basis.

- The migration of skilled labour
- The migration of unskilled labour

MIGRATION OF SKILLED LABOUR:

Brain drain is the possess of loss of skilled intellectual and skilled labour through the movement of such labour to more favourable geographic, economic or professional environments. Brain drain has become a major concern of the developing countries especially, India. The term, which was emerged in 1960s when the skilled workforce started emigrating from the poor countries to the rich countries in search of better job opportunities and living conditions, became a hot topic of discussion over the years.⁵

Migration of Professional is a special case, because they are difficult to replace in developing countries. Many African and Arab male professionals have left their countries in order to work either in western industrialized countries or in the high-salary oil-producing Arab countries.⁶ When the expatriates are going abroad in search of greener pastures, India has been losing its major skilled labour that includes doctors, engineers, scientists and technicians. If we analyze the brain drain trends in India, we could find that there are many reasons why the country fails to hold back its talented youth.

Brain drain, which is the action of having highly skilled and educated people leaving their country to work abroad, has become one of the developing countries concern. Brain drain is also referred to as human capital flight. More and more third world science and technology educated people are heading for more prosperous countries seeking higher wages and better working conditions.

This has of course serious consequences on the sending countries. While many people believe that immigration is a personal choice that must be understood and respected, others look at the phenomenon from a different perspective. What makes those educated people leave their countries should be seriously considered and a distinction between push and pull factors must be made. The push factors include low wages and lack of satisfactory working and living conditions. Social unrest, political conflicts and wars may also be determining causes. The pull factors, however, include intellectual freedom and substantial funds for research.

⁵<http://www.studyabroad.careers360.com/brain-drain-boon-developed-countries-bane-india/>

⁶ https://publications.iom.int/system/files/pdf/arab_migration_globalized_world.pdf

Brain drain has negative impact on the sending countries economic prospects and competitiveness. It reduces the number of dynamic and creative people who can contribute to the development of their country. Likewise, with more entrepreneurs taking their investments abroad, developing countries are missing an opportunity of wealth creation. This has also negative consequences on tax revenue and employment.

The vast majority of skilled migrants come from the developing and transition economies with the main poles of attraction being the U.S.A. and Canada, but also the economies of Western Europe. Recent years to measure the magnitudes of these including the works of Salt, reveal that the brain drain is a particularly places. It is well recognized that the problem is not only scale in nature.⁷

The presence of skilled workers in an economy is thought to generate positive externalities at various levels, including technological, social, political and economic.⁸ If we take the example of an important sector such as health care, massive emigration of professionals can have a devastating impact on the health status of the population in the short run and a strong negative in ounce on productivity and welfare in the long run.

MIGRATION OF UNSKILLED LABOUR:

The agro-based work nature was primarily responsible for migration of unskilled labour at the earlier days. Later, globalisation and urbanisation turned to be a major factor for the migration of unskilled labour. If the urbanisation process is 'generative', urban areas are expected to offer employment opportunities to low-income households who migrate in search of jobs from rural areas.⁹

Urbanisation is crucially linked to migration. Whether migration is a strong or a weak force in urbanisation much depends upon the nature and pattern of migration. In India, migration occurs not only due to economic reasons, but also social-cultural and other natural factors too.¹⁰ The relationship between migration, development and poverty is complex which also varies with the forms of migration, like temporary or seasonal migration, permanent or semi-permanent migration.

In order to earn higher income, the unskilled labour becomes semi-skilled and skilled according to the work nature they are engaged. This can be seen in construction industry, mines, hotel, hospitals, petrol-bunks, etc. almost in every sector we are seeing in our day-to-day life. Even at the time of pandemic situation, during lockdown situation, these inter-state

⁷ Ravender Kumar Kaul, "Migration and society : A study of displaced Kashmiri Pandits", Rawat Publications, New Delhi, pp. 17-19

⁸ Sukhdev Singh and AmandeepKaur, "Causes and Consequences of Migrant Labour in Ludhiana City: A Case Study", Social Action, Vol. 57, Jan-March, 2007, pp.58-59

⁹ Arup Mitra, "Rural Migrants with Urban Jobs", Handbook of Internal Migration in India, 2020, Sage Publication India Pvt. Ltd., NewDelhi, p.41

¹⁰ Deepak K. Mishra, "Internal Migration of Contemporay India- An Overview of Issues and Concerns", 2016, Economic and Political Weekly, Issue. XXXVIII, Vol.29

migrants urged to return back to their own rural areas.¹¹ This pathetic condition explains the socio-legal status of these inter-state migrants faced in India.

Low educational level and skill among the rural population along with the prevailing high cost of living in the cities push these migrant labours to reside in the slum areas, platform and low-facilitated areas. They also encroach places for living due to the non-availability of residential places. Sanitation becomes a big question in these areas and the local inhabitants of those occupied places become restless due to these migrated labours. The public opinion on migrated labour in cities tends to be very hostile towards poor and unskilled migrant labours, who are often blamed for many city woes, including those related to deteriorating transport facilities, environment and sanitation. In this situation, it becomes much difficult for the migrant labours to survive in the cities. This unrest has increased much at the times of lock-down during pandemic, which cause re-migration of these labour.

SOCIO-LEGAL STATUS OF MIGRANT LABOUR IN INDIA:

The constitution of India is the first and foremost law that protects the labours rights. The fundamental rights and the directive principles of state policy including Preamble provide various rights to the migrant labour. Our Preamble of Constitution declares:

WE, THE PEOPLE OF INDIA, are having solemnly resolved to constitute India in to a SOVERIGN, SOCIALIST¹², SECULAR, DEMOCRATIC, REPUBLIC and to secure to all its citizens: Justice-Social, economic, and political; Liberty-of thought, expression, belief, faith and worship.

The term "*Socialist*" is used simply to indicate that the goal of the State in India is to secure 'a better life for the people' or 'equality of opportunity'. Socialism like democracy is interpretable differently in different countries. India has her own concept of socialism and all she wants is a better life for the people. Stating that the word "Socialist" in the Preamble must mean something, the Apex Court in Randhir Singh case said: Even if it does not mean "to each according to his used", it must mean "equal pay for equal work"¹³

In *Excel Wear v. Union of India* the Supreme Court observed that the addition of the word 'socialist' might enable the Courts to lean more in favour of nationalization and State ownership of the industry.¹⁴ But, so long as private ownership of industries is recognized and governs an overwhelming large proportion of our economic structure, the principle of socialism and social justice cannot be pushed to such an extent so as to ignore completely or to a very large extent, the interest of another section of the public, namely, the private owners of the undertaking."

¹¹ <https://www.thehindu.com/news/national/tamil-nadu/hc-seeks-report-on-death-of-migrant-labourers/article31>

¹² Inserted by the Constitution (42nd Amendment) Act, 1976

¹³ *Randhir Singh v. Union of India*, AIR 1982 SC 789

¹⁴ *Excel Wear v. Union of India* 1979 AIR SC 25

In *D.S. Nakara v. Union of India*, the Court observed that "the basic framework of socialism is to provide a descent standard of life to the working people and especially provide security from cradle to grave."¹⁵ The principal aim of a socialist State, the Supreme Court held, was to eliminate inequality in income and status and standard of life.

The expression "*Justice*" briefly speaking is "the harmonious reconciliation of individual conduct with the general welfare of the society. An act or conduct of a person is said to be just if it promotes the general well-being of the community." Therefore, the attainment of the common good as distinguished, from the good of individuals, is the essence of justice. Constitution of India professes to secure to the citizens social, economic and political justice. Social justice means the abolition of all sorts of inequities which may result from the inequalities of wealth, opportunity, status, race, religion, caste, title and the like." To achieve this ideal of social justice, the Constitution lays down the Directives for the State in Part IV of the Constitution.

In *Air India Statutory Corporation v. United Labour Union*, the Supreme Court observed that the aim of social justice was to attain substantial degree of social, economic and political equality, which was the legitimate expectation and constitutional goal.¹⁶ The Court ruled that the Preamble and Article 38 of the Constitution envisioned social justice as the arch to ensure life to be meaningful and liveable with human dignity.¹⁷

The expression "economic justice" means justice from the standpoint of economic force. In short, it means equal pay for equal work, that every person should get his just dues for his labour, irrespective of his caste, sex or social status.¹⁸

The equality of opportunity which is an object of our Constitution is not achieved throughout the country. The opportunities are given only in certain parts of the country. These are named as metropolitan cities, corporations etc. People, who do not belong to these parts of the country, in order to get the opportunities, have to migrate to these parts. This creates intra-country migration in and the most prevalent among them are for employment, education and desire to experience new culture. The migration affects the guests as well as the hosts.

Article 19 of the Constitution of India guarantees all citizens the, right to reside and settle anywhere in India. Various freedoms have been provided by our Constitution to all irrespective of their status. This freedom of movement is considered ideal for the development of any free and liberal economy.

Our constitution safeguards very valuable right to life and personal liberty of the citizens of India including migrant labours. Hon'ble Supreme Court has widened the scope of Article 21 and created new constitutional safeguards to migrant labours. The Courts in various decisions, have given an extended connotation to the 'right to life'.

¹⁵ *D.S. Nakara v. Union of India* AIR 1983 SC 130

¹⁶ *Air India Statutory Corporation v. United Labour Union*, AIR 1977 SC 645

¹⁷ *ibid*

¹⁸ Narendra Kumar, "Constitutional Law of India", Allahabad Law Agency, Haryana, 2015, p.39

Right to live with human dignity

The Supreme Court in *Francis Coralie v. Union Territory of Delhi*, held that the right of life guaranteed under Article 21 is not confined merely to physical existence or to the use of any faculty or limb through which life is enjoyed or the soul communicates with outside world but it also includes within its scope and ambit the right to live with basic human dignity and the state cannot deprive any one of this precious and invaluable right because no procedure by which such deprivation may be affected can ever be regarded as reasonable, fair and just.¹⁹

Now the rights and benefits conferred on the workmen employed by a contractor under the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 and the Inter-State Migrant Workmen (Regulation of Employment and condition of service) Act, 1976 are clearly intended to ensure basic human dignity to the workmen and if the workmen are deprived of any of these rights and benefits to which they are entitled under the provisions of these two pieces of social welfare legislation, that would, clearly be a violation of Article 21 by the Union of India, the Delhi Administration and the Delhi Development Authority which as principal employers are made statutorily responsible for securing such rights and benefits to the workmen.

The non-payment of minimum wages to the workers has been held by the Supreme Court in *People's Union for Democratic Rights v. Union of India*, as violative of the "right to life".²⁰ The Court held the Contract (Regulation and Prevention) Act, 1970, and the Inter-State Migrants Labour (Regulation, Employment and Conditions of Service) Act, 1979, which conferred the rights and benefits on the workmen employed by a contractor, were clearly intended to ensure basic human dignity to workmen.²¹

In *Bandhua Mukti Morcha v. Union of India*, Bhagwati, J. observed: It is the fundamental right of everyone in this country to live with human dignity free from exploitation.²² This right to live with human dignity enshrined in Article 21 derives its life breath from clauses (e) and (f) of Article 39 and Articles 41 and 42 and it must include protection of health and strength of the workers, conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief.

Right to social security and protection of the family

Right to life guaranteed under Article 21 includes within its ambit "the right to social security and protection of the family". Interpreting Article 39(e) of the Constitution of India, Article 25(2) of the Universal Declaration of the Human Right and Article 7 of the International Convention on Economic, Social and Cultural Rights, 1966, K. Ramaswamy, J. in *Calcutta Electricity Supply Corporation (India) Limited (C.E.S.C. Limited) v. Subhas Chandra Bose*,

¹⁹ *Francis Coralie v. Union Territory of Delhi*, AIR 1981 SC 746

²⁰ *People's Union for Democratic Rights v. Union of India*, AIR 1982 SC 1473

²¹ Narendra Kumar, "Constitutional Law of India", Allahabad Law Agency, Haryana, 2015, p.73

²² *supra*

held that the right to social and economic justice was a fundamental right.²³ The learned Judge explained that rights to life and dignity of person and status without means, were cosmetic rights. Socio-economic rights were, therefore, basic aspirations for meaningful right to life and that the right to social security and protection of the family were integral part of the right to life.

Right against exploitation

Articles 23 and 24 guarantees "the fundamental right against exploitation". This right is secured to every person, whether citizen, non-citizen or an alien include migrant labour because they are also the citizen of India in this context. In some case the migrant labour are treated as forced labour. They are come to work place from whole territory of India. They cannot oppose the situation which was created by contractors or agents and they used as bondage or forced labour without wages. The protection contained therein, is available not only against the State but also against private individuals.

Article 23(1) provides "Traffic in human beings and begar and other similar forms of forced labour which are migrated from one place to another place for better opportunities, are prohibited and any contravention of this provision shall be an offence punishable in accordance with law." It prohibits "traffic in human beings", "begar" and other similar forms of forced labour. It further declares that any contravention of this prohibition shall be an offence punishable by law. Article 23(1), thus, envisages legislation for the enforcement of the prohibition contained therein. In *People's Union for Democratic Rights v. Union of India*, the Supreme Court held that Article 23(1) would strike at forced labour in whatever form it might manifest itself.²⁴ It thus prohibited not only "begar" or other unpaid labour but also prohibited compelling all unwilling labour, whether paid or not.

In *Labourers working on Salal Hydro-Electric Project vs. State of Jammu & Kashmir*, there were some migrant worker engaged in Salal Hydro project in J&K and their children were also found working in this project.²⁵ The three Judges bench said that "this is why Article 24 limits the prohibition against employment of child labour only to factories, mines or other hazardous employment clearly, construction work is a hazardous work and no child below the age of 14 years can therefore be allowed to be employed in construction work by reason of the prohibition enacted in Article 24 and this Constitutional prohibition must be enforced by the Central Government".²⁶

The Directive Principles of State policy lay down goal posts and the direction of State Policy.²⁷ While the right to work is not a fundamental right for the citizens of India, it is included in the Directive Principles of State Policy. It states "The state shall within the limits of its economic capacity and development, make effective provision for securing the right to

²³ AIR 1989 SC 190

²⁴ AIR 1982 SC 1473

²⁵ *Labourers working on Salal Hydro-Electric Project vs. State of Jammu & Kashmir*, 1984 SCC 538

²⁶ *Supra*

²⁷ The Constitution of India, 1950, Part IV

work". The Directive Principles also include provision for just and humane conditions of work and maternity relief. Further, "the state shall endeavour to secure by suitable legislation, or economic organization or any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, and conditions of work ensuring a decent standard of life."²⁸

The education issues of migrant children are diversified. Besides migrant children's difficult schooling caused by household registration system, there are also three other problems such as migrant children's difficult schooling caused by inconsistency of education resources between their origins and destinations, discontinuous education process caused by their parents' unstable employment and weak family education caused by their parents lower education degrees and longer working time. The main cause of education issues of migrant labour is lack of their parents' effective supervision and family care. The majority of migrant labour works in hazardous industries with unhygienic and poor working conditions. Migrant workers are always exposed to health risks at work.²⁹ Article 43 has been held to furnish the principle by which unfair labour practice can be judged. The Article also says that the living wages should be given to all workers, such as migrant labour.

NEED FOR REFORM:

Migration under distress conditions is obviously not a positive sign for economic development of the country. So, to reduce the outflow of migrants from their place of origin, there must be a continuous institutional support by the concerned authorities for the people in rural areas. Until and unless there is an improvement in the rural poor's economic status and resources and agriculture becomes profitable and viable, there can be no stopping of migration to other regions in search of employment. Though it has been accepted that out-migration from the rural areas improves the standard of living of the people in the origin, it also involved a sizeable transfer of human capital which have adversely affected all sectors of development. A consequence of this is a comparative shortage of people in the productive age group and a higher dependency ratio in the region. More investment in the traditional sector in industrially poor regions is the greatest need, not only for development but also for employment creation. Development of small and cottage industries in the rural areas, promotion and protection of traditional artisan works and handicrafts will also create employment opportunities in the villages and thus reduce migration. Proper facilities for the care and education of children of the migrants should be created at the destination of migration. At the origin of migration a record should be maintained about the prospective migrants and the process and destination their migration. Moreover, the Inter-State Migrant Workers Act, 1979 suffers from difficulty in implementation and hence requires to be reformed to the present situation.

²⁸ Report on Conditions of Worker and Promotion of Livelihoods in the Unorganised Sector, by National Commission for the Unorganised Sector, New Delhi, pp.154-155

²⁹ Satbhai, Sandip, "Rights of Migrant Workers in India-A Constitutional and Legislative Perspective", Journal of Interdisciplinary Cycle Research, 2021, Vol. XIII. February Issue.

CONCLUSION:

Reverse migration is not the only concern for the government because many seasonal migrants are stranded in cities and unable to return to their villages.³⁰ Rural development and agriculture should be given high priority in planning and government programmer in order to reduce migration and reverse migration. Implementing the laws to all the sectors of work, either organised or unorganised, ensures the constitutional safeguards for the migrant labour. Keeping a record of migrant labour, either skilled, semi-skilled or unskilled in every State and effective implementation of 'One Nation One Ration' will ensure the protection of migrant labour, thereby attaining social justice and also helps to reduce reverse migration, which is the need of this hour.

³⁰ Rachel Thomas, "An Analysis of the Migrant Crisis in India in Light of Covid-19 Pandemic", *ILI Law Review*, Special Issue 2020, pp.25-43.