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The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979: A Critical Perspective

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ABSTRACT

The process of migration takes place frequently and migrant workers are found everywhere. Several factors including demographic factors, economic factors, political factors and so on contribute to the behavior of human migration. There are different kinds of migrant workers like inter-State migrant workers, intra-State migrant workers, international migrants and so on. At the domestic level, it becomes imperative to focus on intra-State and inter-State migrant workers. In India, we have several Articles contained in the Constitution of India, 1950 conferring a plethora of rights to migrant workers and members of their families. Also, there are several judicial decisions and interpretations that have broadened the welfare mechanism. Further, a significant legislation namely the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 was introduced in order to safeguard the interests of inter-State migrant workers. It was fabricated to combat the Dadan Labour system prevailing primarily in the State of Orissa. This particular piece of enactment contains several provisions aimed at the welfare of migrants. However, by conducting a critical analysis of the above mentioned statute some of the loopholes come to light. This paper seeks to analyze the Indian Constitutional and legislative framework in view of Inter-State Migrant Workmen Act, 1979 in detail. It also discusses the lacunae in detail and seeks to make recommendations on how the legal framework can be improved. These recommendations will help to secure the rights of migrant workers more effectively and efficiently.

Keywords: Migration, Migrant Workers, Dadan Labourers, Constitution of India, 1950, Inter-State Migrant Workmen Act, 1979, Critical Analysis, Recommendations.

I. INTRODUCTION

Generally speaking, migration is defined as the crossing of the boundary of a predefined spatial

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unit by one or more persons involved in a change of residence². In a given country like India, workers can migrate from one State to another State or they can migrate within the same State. Workers who migrate from one State to another State are called “Inter-State Migrant Workers” and workers who migrate within the same State are called “Intra-State Migrant Workers.” Also, workers can migrate from one country to another country which is termed as international migration. This research paper is concerned with “Inter-State Migrant Workers” in India. The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 is a legislation enacted for the welfare of inter-state migrant workers in India.

There can be several causes for migration both at the macro level and the micro level. Also, there are several factors responsible for migration including demographic factors, political factors, economic factors, ecological factors and so on. Primarily, economic factors contribute significantly to the behavior of migration. Workers may migrate from rural areas to urban areas for their economic progress.

The Preamble to the Constitution of India, 1950 aims at social justice and economic justice. The Fundamental Rights and Directive Principles of State Policy envisaged under PART-III and PART-IV respectively are concerned with several welfare mechanisms for the welfare and protection of rights of migrant workers and their families.

Keeping in mind the Constitutional mandate, the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 and the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Central Rules, 1980 were brought into force with the objective of fighting against the Dadan Labour System prevalent predominantly in the State of Orissa. Some of the salient features of this enactment comprises of registration of establishments employing inter-state migrant workmen, licensing of contractors, duties and obligations of contractors, wages, welfare and other facilities to be provided to inter-state migrant workmen, role of inspecting staff, penalties for non-compliance of the provisions of this Act and so on.

By a critical analysis of the aforementioned statute, it becomes evident that it suffers from several loopholes. Some of the most prominent drawbacks are intra-state migrant workmen are excluded from the ambit of this Act, applicability is inadequate, no effective implementation mechanism with respect to registration of establishments and licensing of contractors, migrant

² Pieter Kok, *The definition of migration and its application: Making sense of recent South African Census and Survey data*, JSTOR (Jun. 28, 2021, 7:38 PM), https://www.jstor.org/stable/20853242?read-now=1&refreqid=excelsior%3A7d7b20d63e9486849c9620d3f24ae4e1&seq=1#page_scan_tab_contents.

workers working in the unorganized sector are neglected and so on.

This research paper discusses the aforesaid lacunae in detail and makes recommendations on how these issues can be rectified. This paper is divided into the following sections. Firstly, it outlines the historical background that led to the formulation of this legislation. It also throws light on some of the major causes of migration. Secondly, it is concerned with the Indian Constitutional framework on migrant workers and their families and judicial interpretation with respect to the same. Thirdly, it conducts a critical analysis of Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979. Lastly, it makes recommendations on how the lacunae need to be addressed.

II. HISTORICAL BACKGROUND

It is evident from the Statement of Objects and Reasons to the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 that this legislation was enacted to combat malpractices and protect the interests of Dadan Labour³ employed primarily in the State of Orissa. The contractors or Sardars or Khatadars recruited or employed dadan labour promising them to pay wages on a piece rate basis. However, this promise was never kept and dadan labourers were exploited and exposed to malpractices with no suitable working conditions. This system of tremendous worker exploitation is wherein some money (dadan) is given to a person who is in desperate need of money and they are in turn made to work for that amount⁴.

In order to address this problem, it was suggested to constitute a Compact Committee at the Twenty Eighth Session of the Labour Ministers' Conference conducted on 26th October, 1976 in the State of New Delhi. The Compact Committee was formed in February, 1977 which recommended that a separate Central enactment should be fabricated in order to protect the interests of inter-state migrant workmen. It was also averred that such a legislation is the need of the hour because the Contract Labour (Regulation and Abolition) Act, 1970 was not entirely successful in eradicating the malpractices initiated by the contractors or Sardars or Khatadars⁵. It is with this objective and historical background that the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 and the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Central Rules, 1980 came

³ Inter-State Migrant Labourers in the State of Orissa were known as Dadan Labourers.

⁴ Sandip Bandyopadhyay & V. Ramaswamy, *Dadan Workers in the Calcutta Metro*, JSTOR (Jun. 28, 2021, 7:50 PM), https://www.jstor.org/stable/4374172?seq=1#metadata_info_tab_contents.

⁵ The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, No. 30, Acts of Parliament, 1979 (India).

into effect.

There can be various causes for migration. At the macro level, it is due to inter-regional and intra-regional disparities and at the micro level it is owing to absence of employment opportunities resulting in poor standards of living⁶. The most important issue is how to safeguard the human rights and dignity of migrant workers who work in various occupations like agriculture, construction projects, brick kilns, sugar factories, sugar cane cutters and so on⁷.

Some of the primary factors responsible for migration are demographic factors, economic factors, political factors, ecological factors and some miscellaneous factors⁸. Push factors are some of the adversities or inadequacies that motivate the migrant workers to leave their home State and migrate to the host State. On the other hand, pull factors are some of the benefits, comforts or incentives that the host State has got to offer. Pull factors in the host State attract the workers to migrate. Yamini Gurjar in her paper discusses the pull and push aspect of some of the major factors of migration⁹.

- Demographic factors: In this case, some of the push factors are population growth, inadequate educational facilities, poor medical facilities and so on. Pull factors might be stable population, various welfare facilities and so on.
- Economic factors: Some of the commonly found push factors are unemployment, poverty, insufficient wages and low living standards. Primarily, pull factors are higher wages which enable better living standards and demand for labour.
- Political factors: Talking about political factors, workers have a tendency to migrate away from States wherein the political systems influence the industries resulting in a disadvantage to workers. This constitutes a push factor. Labourers migrate towards States having stronger political stability wherein their rights and privileges are protected sufficiently. This represents the pull factor when it comes to political factors.

⁶ Dr. Prashant Mishra & Dr. P.K. Pandey, *Protection of Inter-State Migrant Workers in India- An analysis*, SSRN (Jun. 28, 2021, 8:04 PM), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2033466.

⁷ Chitranjali Negi, *Human Rights Violations of Migrant Workers in India during Covid-19 Pandemic*, SSRN (Jun. 28, 2021, 8:00 PM), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3629773.

⁸ Yamini Gurjar, *Analysis of the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979*, RESEARCHGATE (Jun. 28, 2021, 8:10 PM), https://www.researchgate.net/publication/344181012_ANALYSIS_INTERSTATE_MIGRANT_WOEMEN_ACT-By-Yamini-Gurjar-_WHITE_BLACK_LEGAL_Vol-2-Issue-4.

⁹ *Id.* at 7.

- Ecological factors: Lack of natural resources and frequent natural calamities are some of the push factors. Sound environmental policies and security are some of the pull factors.
- Miscellaneous factors. Some of the miscellaneous pull factors includes the host state could be the residence of their ethnic community, marriage, family decisions and so on.

Taking for instance, when it comes to economic factors, workers migrate from rural areas to urban areas for their economic development. The predominant occupation in rural areas is agriculture which usually has a lower productivity per worker than the non-agricultural activities which are mainly based in urban areas. Therefore, rural-urban migration is a reflection of a structural shift in economic activities from agriculture to non-agriculture which has historically characterized the process of economic development¹⁰.

III. INDIAN CONSTITUTIONAL FRAMEWORK ON MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES AND JUDICIAL INTERPRETATION

The Preamble to the Constitution of India, 1950 mandates social justice and economic justice. It has to be noted that Part-III of the Indian Constitution which confers “Fundamental Rights” and Part-IV of the Constitution which articulates “Directive Principles of State Policy” contain various provisions aimed at achieving protection and welfare of workers including inter-state migrant workers and their families.

- In light of migrant workers, it is significant to highlight Articles 19(1)(d)¹¹, 19(1)(e)¹² and 19(1)(g)¹³ of the Constitution which are concerned with right to movement, right to residence and right to practice any profession, occupation, trade or business.
- Article 19(1)(c) of the Constitution guarantees to every citizen the right to form associations or unions¹⁴. This is very significant in light of promoting trade unionism and collective bargaining.

¹⁰ T.S. Papola, *Rural-Urban Migration: Problem of Socio Demographic Regulations*, JSTOR (Jun. 28, 2021, 8:18 PM), https://www.jstor.org/stable/27767041?read-now=1&refreqid=excelsior%3A21eda446f7f46e6ed7c0be21766a91ab&seq=1#page_scan_tab_contents.

¹¹ INDIA CONST. art. 19, cl. 1(d), “All citizens shall have the right to move freely throughout the territory of India.”

¹² INDIA CONST. art. 19, cl. 1(e), “All citizens shall have the right to reside and settle in any part of the territory of India.”

¹³ INDIA CONST. art. 19, cl. 1(g), “All citizens shall have the right to practice any profession, or to carry on any occupation, trade or business.”

¹⁴ INDIA CONST. art. 19, cl. 1(c).

- Also, Article 23 speaks about prohibition of traffic in human beings, beggar and other similar forms of forced labour¹⁵. It categorically posits that any violation of the aforesaid provision shall be an offence punishable in accordance with law¹⁶.
- It is pertinent to note that the issue of child labour is still rampant and ubiquitous in our country. In order to combat the same, Article 24 prohibits employment of children below the age of 14 years in factories, mines or any other hazardous employment¹⁷.
- The principle of equal pay for equal work for both men and women is articulated by our Constitution.¹⁸
- A number of social security provisions are also enunciated in our Constitution. Article 38 of the Constitution, being a Directive Principle of State Policy clearly proclaims that the State shall make all possible efforts to augment the welfare of the people by securing social order in which social justice, economic justice and political justice shall prevail.¹⁹ Article 41 mandates that in instances of unemployment, old age, sickness or disablement, the State shall make appropriate provisions for securing right to work, right to education and right to public assistance²⁰. Further, Article 42 obligates the State to make provisions for achieving just and humane conditions of work and maternity relief²¹.
- Article 43 of the Constitution is very significant in light of migrant workers because it contains provisions with respect to securing living wages for workers. It casts a duty on the State to ensure that all workers whether employed in the agricultural sector, industrial sector or any other sector should be granted living wages, decent standard of living, full enjoyment of leisure and other social or cultural opportunities²². Further, Article 47 talks about the duty of the State to take suitable measures for raising the level of nutrition, uplifting the standard of living and to improve public health²³.

At this juncture, it becomes relevant to examine some significant landmark judgments on constitutional interpretation with respect to migrant workers. Firstly, in the judgment of *Bandhua Mukti Morcha v. Union of India*²⁴, the question was whether the inter-state migrant

¹⁵ INDIA CONST. art. 23, cl. 1.

¹⁶ *Id.* at 14.

¹⁷ INDIA CONST. art. 24.

¹⁸ INDIA CONST. art. 39, cl. (d).

¹⁹ INDIA CONST. art. 38, cl. 1.

²⁰ INDIA CONST. art. 41.

²¹ INDIA CONST. art. 42.

²² INDIA CONST. art. 43.

²³ INDIA CONST. art. 47.

²⁴ *Bandhua Mukti Morcha v. Union of India*, MANU/SC/0051/1983.

workmen Act was applicable to workmen employed in the stone quarries and stone crushers. The Supreme Court highlighted that even though the thekedar or jamadar recruits or employs workmen for the stone quarries and stone crushers by sending word through the “old hands”, the workmen so recruited or employed would still be inter-state migrant workmen because the “old hands” are acting as agents of the thekedar or jamadar who come within the ambit of “contractors” under Section 2(1)(b) of the Act. While delivering the aforesaid judgment, the Apex Court pointed out that the Inter-State Migrant Workmen Act is a social welfare legislation intended to effectuate the Directive Principles of State Policy. Therefore, it must be given broad and expansive interpretation so as to prevent the mischief and advance the remedy.

Secondly, in the case of *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*²⁵, the Court has articulated that right to life guaranteed under Article 21 is not restricted to mere physical existence or to the use of any faculty or limb through which life is enjoyed or the soul communicates with the outside world but it includes within its ambit the right to live with basic human dignity.

Thirdly, keeping in view this expanded scope of Article 21 the Supreme Court in the judgment of *People’s Union for Democratic Rights v. Union of India*²⁶, made it clear that the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 is a social welfare legislation enacted with the main objective of ensuring basic human dignity to the workmen and if the contractors deprive the workmen of these rights and benefits provided under the Act, Article 21 of the Constitution is violated.

Therefore, in addition to Constitutional provisions the Indian Judiciary has time and again emphasized on the protection of the rights of migrant workers.

IV. INTER-STATE MIGRANT WORKMEN (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) ACT, 1979- A CRITICAL ANALYSIS

It is evident from the Preamble to this Act that its main objective is to regulate the employment of inter-state migrant workmen and to make provisions with respect to their conditions of service. This piece of social welfare legislation is divided into 7 Chapters and 36 Sections. Before conducting the critical analysis, I would like to enumerate some of the key features and highlights of this enactment²⁷:

²⁵ *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, MANU/SC/0517/1981.

²⁶ *People’s Union for Democratic Rights v. Union of India*, MANU/SC/0038/1982.

²⁷ *The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979*, No. 30, Acts of Parliament, 1979 (India).

- a. In terms of application, it is applicable to every establishment and contractor who employs five or more inter-state migrant workmen.
- b. It defines inter-state migrant workman as any person who is recruited by a contractor in one State under an agreement for employment in an establishment in another State and the knowledge of the principal employer in relation to that establishment is immaterial.
- c. One of the primary purposes of enacting this piece of welfare legislation is to make provisions for the registration of establishments employing inter-state migrant workmen. It shall be the duty of the principal employer of an establishment to present an application for the registration of the establishment and pay the prescribed fees to the registering officer within such period as notified by the appropriate Government in the official gazette. This Act strictly prohibits employment of inter-state migrant workmen without registration.
- d. Another prominent feature of this Act is to make provisions for the compulsory licensing of contractors who recruit or employ inter-state migrant workmen. The license issued specifies certain conditions including terms and conditions of agreement under which workmen will be recruited, remuneration, wages, hours of work and other essential amenities.
- e. The aforesaid Act also specifies certain significant duties and obligations of contractors. The contractors are mandated to furnish particulars about inter-state migrant workmen to specified authorities in the States from which they are employed and States in which they are employed. Every contractor is obligated to issue a passbook to every inter-State migrant workman which clearly specifies the following parameters including name and place of establishment where the workman is employed, period of employment, rates and modes of payment of wages, displacement allowance payable, return fare payable to the workman on the expiry of the period of his employment, details on deductions made and so on.
- f. It is categorically stated that inter-state migrant workmen shall not be paid wages less than that fixed under the Minimum Wages Act, 1948 and the mode of payment shall be in cash. The contractors are also required to pay displacement allowance and journey allowance to inter-state migrant workmen. Other facilities comprises of providing appropriate residential accommodation, medical facilities, protective clothing, ensuring equal pay for equal work for both men and women and so on.

- g. The aforementioned legislation also stipulates a monitoring mechanism by providing for appointment of inspectors who are entrusted with certain functions. They are empowered to inspect whether the provisions of the Act in relation to maintaining registers, records or notices, payment of wages, conditions of service, other facilities are being compiled or not. They are also entitled to examine any person for the purpose of checking whether such person is an inter-state migrant workman or not.
- h. With respect to imposing penalties, this Act proclaims that any contravention of the provisions pertaining to regulation of employment of inter-State migrant workmen and conditions of license issued would be punishable with imprisonment for a term which may extend to one year or fine of one thousand rupees or with both. With respect to other offences, punishment shall be imprisonment for a term which may extend to two years or with fine of two thousand rupees or with both.

Critical analysis of Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979:

(A) Factors to be considered in the implementation of a labour legislation

It is important to point out that implementation of any labour law depends on three major factors namely, inherent strength of the provisions contained in the enactment, degree of organization amongst the workers and effectiveness of the enforcement mechanism²⁸. Keeping in mind the aforementioned factors, the provisions of Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 needs to be interpreted. In my opinion, the aforesaid legislation is strong enough to meet all the requirements of inter-state migrant workers. This is because it throws light and makes arrangements for various aspects aimed at the welfare of migrant workers including displacement allowance and journey allowance. Nevertheless, the degree of organization amongst migrant workers is very poor because a large number of such workers work in the unorganized sectors. Also, they are poverty stricken, illiterate and constitute one of the marginalized groups of our society who can be easily exploited. Further, taking into consideration the wide range of problems and extreme difficulties faced by the migrant workers during the pandemic, it can be concluded that the enforcement or implementation mechanism has failed miserably. Therefore, the statute has created only a strong theoretical framework but it has failed practically.

²⁸ Yamini Gurjar, *Analysis of the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979*, RESEARCHGATE (Jun. 28, 2021, 8:10 PM), https://www.researchgate.net/publication/344181012_ANALYSIS_INTERSTATE_MIGRANT_WOEkMEN_ACT-By-Yamini-Gurjar-_WHITE_BLACK_LEGAL_Vol-2-Issue-4.

In the case of *Labourers Working on Salal Hydro Project v. State of Jammu & Kashmir*²⁹, the Supreme Court observed that inter-state migrant workmen are illiterate and unorganized and owing to their extreme poverty, they tend to be easy victims of abuses and malpractices. In this case, the Apex court issued directions to the Central Government for the implementation of the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 and Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Rules, 1980 with respect to migrant workers employed in the Salal Hydro Project.

(B) Intra-State migrant workmen are excluded from the ambit of this Act

It has to be highlighted that intra-State migrant workmen are excluded from the ambit of this legislation. It is not applicable to workers who migrate within a given State. It is only applicable to workers who migrate from one State to another State. According to census data on Migration, in the year 2001 nearly 84.2% migrants are from within the State of enumeration. Therefore, by not taking into consideration intra-state migrant workers, Parliament has left approximately 268 million migrant workers without suitable protections under law³⁰. Further, according to 2011 statistical data, the number of inter-state migrants increased at 55% between 1991 and 2001 and decreased to 33% between 2001 and 2011. Between these periods, migrant labourers did not migrate to big commercially advantageous states like Delhi or Maharashtra, but relocated within the same State³¹. This emphasizes on the need of including intra-state migrant workers within the ambit of the aforesaid legislation. Also, in view of Article 14 of the Indian Constitution which confers equality before the law and equal protection of laws to every person in the territory of India, while making a law the legislature should not discriminate between inter-state migrant workmen and intra state migrant workmen.

(C) The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 is inadequate in its applicability

This legislation applies to every establishment in which five or more inter-State migrant workmen are employed or to every contractor who employs or employed five or more inter-State migrant workmen. Under the Occupational Safety, Health and Working Conditions Code, 2020 provisions with respect to inter-State migrant workers are applicable to establishments in which ten or more inter-State migrant workers are employed. It has to be noted that the Sixth

²⁹ *Labourers Working on Salal Hydro Project v. State of Jammu & Kashmir*, MANU/SC/0243/1983.

³⁰ Akhileshwari Reddy, *New Labour Codes: What changes for interstate migrants? An analysis of two critical codes*, VIDHI CENTRE FOR LEGAL POLICY (Jun. 29, 2021, 7:49 PM), <https://vidhilegalpolicy.in/blog/new-labour-codes-what-changes-for-interstate-migrants/>.

³¹ Deepak Tongli, *Legal framework relating to migrant workers needs to be reconfigured reconfigured in India*, LIVELAW.IN (Jun. 29, 2021, 7:52 PM), <https://www.livelaw.in/columns/legal-frame-work-relating-to-migrant-workers-needs-to-be-reconfigured-in-india-160865>.

Economic Census for the year 2013-2014 suggests that 70% of establishments in India employ less than 6 workers³². Therefore, in my opinion the provision with regard to applicability of this statute is totally inadequate. If small establishments employ less than five inter-State migrant workmen, there can be no scrutiny mechanism because they do not come within the scope of this enactment.

(D) No effective implementation mechanism with respect to registration of establishments and licensing of contractors

In spite of making provisions for the registration of establishments and licensing of contractors, this Act failed miserably during the lockdown period. The State Governments had no adequate data on inter-state migrant workmen who were stranded and homeless. This indicates poor implementation or enforcement of this enactment. In addition to payment of wages, this Act requires the contractors to pay displacement allowance, journey allowance and so on. It should be noted that compliance with these requirements is onerous, as a result of which the cost of employing inter-state migrant workmen becomes higher than recruiting labour from within the same State³³. One of the reasons for incorporating this provision is maybe to ensure that employers first give preference or priority to local workers within the State as opposed to inter-state migrant workers³⁴. This not so pragmatic approach disincentivizes contractors and principal employers to provide actual data about inter-state migrant workmen to inspectors³⁵.

In the case of *Shashank S Mangal v. Government of NCT of Delhi*³⁶, the Delhi High Court passed an order articulating that there is a dire need for creating a mechanism for registration of migrant workers. Even though some developments have taken place under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 registration or grant of licenses under the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 is very negligible.

In response to Right to Information (RTI) request filed by activist Anjali Bhardwaj, the Central Labour Commissioner averred that only 33,776 migrant workers were registered under the

³² Akhileshwari Reddy, *New Labour Codes: What changes for interstate migrants? An analysis of two critical codes*, VIDHI CENTRE FOR LEGAL POLICY (Jun. 29, 2021, 7:49 PM), <https://vidhilegalpolicy.in/blog/new-labour-codes-what-changes-for-interstate-migrants/>.

³³ K.P. Krishnan, *Migrant Workmen Act, 1979, must be rationalized to remove requirements that disincentivise formalisation*, THE INDIAN EXPRESS (Jun. 29, 2021, 7:56 PM), <https://indianexpress.com/article/opinion/columns/india-lockdown-inter-state-migrant-workmen-act-6400710/>.

³⁴ Saumya Giri, *Critical analysis of Migrant Workmen Act, 1979*, LATESTLAWS.COM (Jun. 29, 2021, 8:00 PM), <https://www.latestlaws.com/articles/critical-analysis-of-migrant-workmen-act-1979/>.

³⁵ K.P. Krishnan, *Migrant Workmen Act, 1979, must be rationalized to remove requirements that disincentivise formalisation*, THE INDIAN EXPRESS (Jun. 29, 2021, 7:56 PM), <https://indianexpress.com/article/opinion/columns/india-lockdown-inter-state-migrant-workmen-act-6400710/>.

³⁶ *Shashank S. Mangal v. Government of NCT of Delhi*, MANU/DE/1415/2020.

Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 in the period between 2019 and 2020³⁷. Also, the data stated that zero migrant workers were registered in the States of Delhi, Dehradun and Patna regions for the last five years³⁸.

(E) Migrant Workers are not leading a comfortable life

Labour class is regarded as the backbone of our Indian economy and migrant labourers are considered to be the “builders of our booming economy”³⁹. But in reality, the problems and difficulties confronted by the migrant workers is numerous. A study in Kochi has concluded that migrant workers are made to work for longer hours, reside in slum-like localities on a sharing basis, limited access to safe drinking water and sanitation facilities, no proper arrangement for waste disposal, increased susceptibility to diseases and so on⁴⁰. Again, this clearly implies that the Act is not implemented properly.

On 23rd June, 2020, the Gujarat High Court passed an Order granting bail to 33 migrants proclaiming that in the lockdown, migrant labourers are deprived of their basic necessities including work, food and shelter. But the harsh reality is that instead of making arrangements to send them back home, they are sent to jails. The Honorable High Court regarded migrant labourers as “victims” and “not criminals⁴¹”. This Order is an extremely commendable step by our Indian judiciary in order to protect the basic human rights and welfare of migrants.

In the matter of Problems and Miseries of Migrant Labourers⁴², the Supreme Court held that the States and Union Territories had to observe strict vigilance and supervision as to whether various schemes, benefits, measures are reaching inter-state migrant workers. Also, keeping in mind the financial condition of migrant labourers owing to loss of employment, they have to be treated in a humane manner by police and other authorities. Further, the Apex court also issued directions for the transportation of stranded migrant labourers especially in the States of Maharashtra, Delhi, West Bengal, Tamil Nadu and Gujarat. It was also emphasized that the States and Union Territories should maintain records of all those migrant workers who have

³⁷ Priscilla Jebaraj, *Less than 34,000 inter-state migrant workers in 2019-20, says government*, THE HINDU (Jun. 29, 2021, 8:14 PM), <https://www.thehindu.com/news/national/other-states/less-than-34000-inter-state-migrant-workers-in-2019-20-says-government/article32611360.ece>.

³⁸ *Id.* at 36.

³⁹ Deepak Tongli, *Legal framework relating to migrant workers needs to be reconfigured reconfigured in India*, LIVELAW.IN (Jun. 29, 2021, 7:52 PM), <https://www.livelaw.in/columns/legal-frame-work-relating-to-migrant-workers-needs-to-be-reconfigured-in-india-160865>.

⁴⁰ Dr. Prashant Mishra & Dr. P.K. Pandey, *Protection of Inter-State Migrant Workers in India- An analysis*, SSRN (Jun. 28, 2021, 8:04 PM), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2033466.

⁴¹ Sparsh Upadhyay, *‘These migrants workers are more the victims, certainly not criminals’*, Gujarat HC grants bail to 33 migrant workers, LIVELAW.IN (Jul. 1, 2021, 8:00 PM), <https://www.livelaw.in/news-updates/these-migrant-workers-are-more-the-victims-certainly-not-the-criminals-gujarat-hc-grants-bail-to-33-migrant-workers-158845>.

⁴² MANU/SC/0472/2020.

returned back to their home States. If migrant workers wish to return back to their places of employment, necessary arrangements have to be made.

(F) The Act has failed to meet the requirements of migrant workers employed in the unorganized sectors

According to the National Sample Survey Office (NSSO), nearly 90% of the workers are employed in the unorganized sector. Most of the migrant workers are employed in the unorganized sector. It is pertinent to refer to certain entries of the Union List and Concurrent List of Schedule VII of the Constitution. It has to be noted that Item 81 of the Union List talks about Inter-State Migration and Inter-State quarantine. Item 22 of the Concurrent List is concerned with trade unions, industrial and labour disputes and Item 24 with welfare of labour. These entries have helped organized labour to a considerable extent nonetheless the unorganized sector was always a pitch black area under the lamp⁴³.

(G) Horrific incidents confronted by migrant workers

Recently, in a horrific and heartbreaking incident in the State of Aurangabad, 16 migrant workers were run over by a goods train as they were sleeping on a railway track after having walked for 40 kilometers⁴⁴. If migrant labourers were provided with adequate wages, displacement allowances, journey allowances and other benefits as stipulated under the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, this deeply saddening incident could have been prevented.

Lockdown had to be imposed across India due to the emergence of COVID-19 in the year 2020. As a consequence, a large number of intra-state and inter-state migrant workers had to walk hundreds of kilometers in order to return to their home States. One can easily imagine the kind of pain, suffering and difficulty they would have undergone in travelling back to their homes. This clearly indicates that even though the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 provides for journey allowance, displacement allowance and imposes an obligation on contractors to pay the same to inter-state migrant workers, the implementation of this enactment has failed miserably.

In order to transport migrant workers back to their home States during the pandemic outbreak and lockdown period, special trains known as Shramik Specials were arranged. The migrant

⁴³ Jawhar Sircar, *A long look at exactly why and how India failed its migrant workers*, THE WIRE (Jul. 1, 2021, 8:04 PM), <https://thewire.in/labour/lockdown-migrant-workers-policy-analysis>.

⁴⁴ Mohammed Akhef, *Maharashtra: Train runs over migrant workers in Aurangabad, 16 dead*, THE TIMES OF INDIA (Jul. 1, 2021, 8:08 PM), <https://timesofindia.indiatimes.com/city/aurangabad/maharashtra-train-runs-over-a-dozen-migrant-workers-in-aurangabad/articleshow/75614987.cms>.

workers faced several adversities including problems of trains running late, losing way en route, trains running out of basic facilities like food and water and deaths due to excessive summer heat and so on⁴⁵. It was reported that nearly 97 migrant workers lost their lives on board the Shramik Specials⁴⁶.

The National Human Rights Commission (NHRC) filed an intervention application in the Supreme Court in reference to the Apex Court's suo moto writ petition on the problems and miseries of migrant labourers. The Supreme Court allowed the aforesaid application which made short term as well as long term recommendations aimed at the welfare of migrant workers⁴⁷. The Commission also stipulated that a new clause should be inserted to the aforementioned enactment in order to handle carefully emergency or distress situations like COVID-19 and natural disasters⁴⁸.

This is a detailed critical analysis of the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979. In order to address the above discussed loopholes and defects, the next section makes suggestions or recommendations to tackle the problem effectively.

V. CONCLUSION AND RECOMMENDATIONS

It can be inferred that there are different kinds of migrant workmen like inter-State migrant workmen, intra-State migrant workmen and international migrants. There can be several factors responsible for this process of migration including demographic factors, economic factors, political factors, ecological factors and so on.

From the above mentioned discussion about inter-State migrant workmen, it can be concluded that there are various Constitutional provisions and revered judicial decisions to protect the rights and interests of migrant workers. The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 makes provisions specifically with regard to one set of migrant workers namely inter-State migrant workers.

Some of the salient features of this enactment comprises of registration of establishments

⁴⁵ Avishek G Dastidar, *Shramik Specials: 'When the train left, we broke into an applause...It was spontaneous'*, THE INDIAN EXPRESS (Jun. 30, 2021, 10:47 PM), <https://indianexpress.com/article/india/shramik-trains-covid-19-india-lockdown-7128238/>.

⁴⁶ *Id.* at 44.

⁴⁷ Nilashish Chaudhary, *NHRC intervenes in suo moto case on plight of migrants; Suggests long term and short term measures*, LIVELAW.IN (Jun. 30, 2021, 11:00 PM), <https://www.livelaw.in/top-stories/nhrc-intervenes-in-migrant-suo-motu-suggests-long-term-short-term-measures-157893>.

⁴⁸ Nilashish Chaudhary, *NHRC intervenes in suo moto case on plight of migrants; Suggests long term and short term measures*, LIVELAW.IN (Jun. 30, 2021, 11:00 PM), <https://www.livelaw.in/top-stories/nhrc-intervenes-in-migrant-suo-motu-suggests-long-term-short-term-measures-157893>.

employing inter-State migrant workmen, licensing of contractors, appointment of inspectors, making provisions for wages, welfare and other facilities and so on. By analyzing this statute carefully it becomes evident that it is suffering from various drawbacks. The loopholes are intra-State migrant workers are excluded from the ambit of this Act, it is inadequate in terms of applicability, lack of effective implementation mechanism with respect to registration of establishments and licensing of contractors and the Act has failed to meet the requirements of workers employed in the unorganized sectors. Some of the horrific incidents confronted by migrant workers during the pandemic clearly show that this particular enactment is not enforced in its true spirit.

It can be inferred that the Indian Constitutional framework is robust and intact. However, even though the legislature has made commendable efforts to help migrant workers through the Inter-State Migrant Workmen Act, 1979 there are some loopholes that are hindering its practical implementation.

In order to address the loopholes in the Act and also keeping in mind the requirements of all kinds of migrant workers I would like to make the following recommendations.

- Firstly, the title of the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 should be amended to Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979.
- Secondly, in consonance to Constitutional provisions on Fundamental Rights and Directive Principles of State Policy, the Act should also include intra-state migrant workers and not just inter-State migrant workers. All provisions of this enactment should extend to intra-State migrant workers.
- Thirdly, in terms of application, the aforesaid Act is applicable only to establishments employing five or more inter-State migrant workers and to every contractor who employs or who employed five or more inter-State migrant workmen. This needs to be amended. It should be made applicable even if the establishment or contractor employs a single migrant worker. Also, migrant workers can be inter-State or intra-State migrant workers.
- Fourthly, under this Act the displacement allowance payable shall be equal to fifty percent of the monthly wages payable or seventy five rupees whichever is higher. It has to be noted that this legislation was drafted in the year 1979. Taking into consideration the various changes that have taken place since then, it needs to highlighted seventy five rupees is certainly not sufficient for any person to displace from one State to

another State. Therefore, adequate amount of displacement allowance needs to be provided to migrant workers.

- Fifthly, the punishment for contravention of provisions of this Act with respect to employment of inter-State migrant workers is imprisonment for a period of one year or fine which may extend to one thousand rupees. The fine imposed is very less. In my opinion it should be raised to five thousand rupees.
- Sixthly, in order to effectively implement the provisions of this Act, it is important to create awareness and conduct workshops. Migrant workers should be made aware of their rights and benefits conferred on them. The Central and State Governments must make arrangements for creating awareness about rights of migrant workers and members of their families.
- Seventhly, the only authority constituted under this Act is Inspector in order to check whether the provisions of the Act are complied or not. Keeping in mind the failure of this Act during the lockdown period and pandemic, in addition to inspectors other authorities have to be appointed by the Appropriate Government.
- Eighthly, as right suggested by the National Human Rights Commission, a new clause must be introduced to the enactment in order to deal with emergency situations like COVID-19 pandemic and natural disasters.
- Lastly, in order to balance the interests of employers, contactors and workers too much burden should not be imposed on the employer and contractor in terms of journey allowance, displacement allowance, providing residential accommodation, medical facilities, protective clothing and so on. It is not practically possible to implement these provisions owing to which establishments might be disincentivized to register. Taking for instance, either adequate displacement allowance or sufficient journey allowance needs to be given to workers. The legislature has to come up with an appropriate formula to deal with the same.

These are some of the recommendations I would like to make with respect to migrant workers. By incorporating these suggestions, the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 can be brought in line with Fundamental Rights and Directive Principles of State Policy enshrined under the Constitution of India, 1950.
