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Indian Laws- A study on Migrant Labor Rights

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ABSTRACT

In Indian Constitution, Labour Laws have prominent place. *It is the responsibility of a welfare state to ensure that no citizen of this country is denied his right to live with dignity. Part III (Articles 14,15,16,19,21,23 and 24) and Part IV(Article 38,39,41,42,43,43A,54) of the constitution of India protect and safeguard the interest of migrant labour. Labour is a subject in the concurrent list under the constitution of India. Bothe the Central and State Governments are competent to enact laws. As a result, a large number of labour laws have been enacted. There are many labour laws which are applicable to both migrant workmen as well as other workers. These laws include the Minimum Wages Act 1948; the Contract Labour (Regulation and Abolition) Act 1970; the Equal Remuneration Act, 1976; the Building and other Construction Workers (Regulation of Employment and conditions of services) Act 1996; the Workmen's Compensation Act 1923; the Payment of Wages Act 1936; the Child Labour (Prohibition & Regulation) Act, 1986; the Bonded Labour Act 1976• the Employees State Insurance Ac,1952; and the Maternity Benefit Act, 1961; The last three Acts cover only organized sector workers and thus preclude temporary migrants. Above laws were not sufficient to protect migrant workmen, therefore, Parliament passed a separate law for the protection of migrant workmen. Inter-State Migrant Workmen (Regulation and Condition of Services) Act, 1979 specially deals with malpractices associated with the recruitment and employment of workers who migrated across state boundaries.*

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1. Introduction:

In Indian Government Labour Laws are more Prominent. Migration is a key factor to economic development in Indian economy. Unorganised labour played an important role in the nation. Labour Laws are provide number of provisions to migrant labour in India. The workmen when fails to find the adequate means of livelihood in their home state, they migrate to other states for job which bring them lucrative wages. Beside wages, there are other compelling circumstances which compel them to migrate, namely climatic conditions, religious considerations, kinship ties, educational aspirations, discrimination, violence and crime and so on. The practice of recruitment of migrant labour is pathetic one, that is, they are mostly recruited through contractors or agents, once the worker comes under the clutches of the contractor, he takes him too far off places on payment of railway fare only. Migrant workers face various problems such as unlimited period of work, inhuman working conditions insufficient wages, migrant workers thus face both physical and economic problems.'

It is the responsibility of a welfare state to ensure that no citizen of this country is denied his right to live with dignity. He is entitled to get basic amenities in life at least to reasonable levels, whether he belongs to the same state or hails from outside the state. It was in pursuance of the socialist welfare objective that the Indian parliament framed a law relating to the migrant workmen who otherwise would be excluded from the welfare mechanism of the government and not provided with the fundament right of equality before law and equal opportunities for growth. The proper framing and implementation of labour laws inclusive of laws relating migrant workers is sine qua non for a vibrant India with equal opportunities for growth for all.'

1.1 INTER-STATE MIGRANT WORKMEN ACT, 1979

The inter-state migrant labour employment system is abusive in natureand exists in many union states. Such migrant labour is selected from severalparts of a particular state by contractors and agents to work outside the state inlarge construction projects. When the workers are in agent's control, they aretaken to a distant site with the payment of railway travel charge alone.Working hour is not decided for them and they are made to work throughout aweek under utmost severe conditions. The government has introduced migrantworkmen amendment bill in the Rajya Sabha on August 2011. The InterstateMigrant Workmen Act was enacted in 1979 to protect the rights andsafeguard the interests of migrant workers. The Act is proposed to regulatethe employment of interstate migrant workmen and to provide for theircircumstances of service. It applies to every establishment andevery contractor that employs five or more than five interstate migrant workmen.The Act has provision for issuing pass book to every interstate migrantworkman, medical facilities and protective clothing, equal pay for equal work irrespective of gender, wage payment, journey allowance payment includingpayment of wages during the period of journey, and displacement allowancepayment etc. The major accountability for enforcement of the Act lies with

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the state, central governments and union territories in the establishment falling in respective domain.The problem of migration is sought to be controlled by providingimproved infrastructural facilities, various course of action through ruraldevelopment, equitable dispersal of resources to remove regional disparities,increased literacy, land reforms, employment generation and financialassistance etc. In order to create better employment opportunities at statelevel, the government has launched a number of schemes like integrated wastelands development programme, swarnjayanti gram swarozgaryozna, sampoorna gramin rozgar yozna, pradhan mantra gram sadakyojana, droughtprone areas programme, national food for work programme, indraawass yojna and desert development programme etc. Further, the government hasrecently enacted the National Rural Employment Guarantee Act to providehundred days guaranteed employment to rural households.

1.2 **HUMAN RIGHTS AND MIGRANT WORKERS**

All the people including migrant workers and their families are entitled to certain human rights irrespective of the nationality, race, legal or other status. The Human Rights at issue The human rights of the migrant workers and their families include the following rights.

1. Right to work and receive wages for livelihood.
2. Right to freedom from race, ethnic, gender, religion or any other discrimination in all aspect of work.
3. Right to equality before the law for everyone specifically, for human rights and labour legislation irrespective of migrant's legal status.
4. Right to equal pay for equal work.
5. Right to freedom from forced labour.
6. Right to protection against arbitrary expulsion from employment.
7. Right to return home as per the migrant's wish.
8. Right to adequate standard of living for the health and wellbeing of the migrant worker along with his or her family.
9. Right to safe working condition and environment.
10. Right to reasonable working hours with adequate rest and leisure.
11. Right to freedom to join a trade union.
12. Right to freedom from sexual abuse in the work place.
13. Right to protection during pregnancy from hazardous work.
14. Right to child protection from being exploited and any work that are hazardous.
15. Right to education for migrant worker's child.
16. Right of migrants and their family for reunion.

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2. Objective of the Study: The present paper is an attempt to analyze various laws for the protection of internal migrant workmen. This paper also discusses various causes of migration in India.

2.1 Causes Migration: A Large number of young people are migrating because rural India is saturated and cannot provide employment opportunities for a growing population.' Migration decisions are influenced by both individual and household characteristics as well as the social matrix, which is best captured in social anthropological studies. Factors such as age, education level, wealth, land ownership, productivity and job opportunities influence the participation of individuals and household in migration, as do social attitudes and the presence of supporting social networks.' Millions of people who migrated from their far off villages to the big cities of Mumbai, Delhi, Kolkata etc do so because these cities offered than some promise for a better living. Their home villages virtually reject them as surplus population which the rural resources of land is not able to sustain any longer.[5] Migration in India is mostly influenced by social structures and pattern of development. The development policies by all the governments since independence have accelerated the process of migration. Uneven development is the main cause of migration. Added to it, are the disparities, inter regional and amongst different socio economic classes. The land less poor who mostly belong to lower castes, indigenous communities and economically backward regions constitute the major problem of migrants. Indian agriculture become non remunerative resulting into suicide of farmers.[6]

The most effective theory for explaining migration is push and pulls theory which states that the migration generally takes place when the positive pull factors at the place of distinction are outnumbered by push factors at the place of origin. Migration is caused by negative factors (push factors) in the place of origin as well as positive factor (pull factors) in the places of distinction. An analysis of the determinants of migration would, therefore be incomplete, if it was confined to factors at the places of origin or at the places of distinction alone.[7]

3.0 Methodology: This study purely depends on secondary data. The data collected through reports, records, Books, Magazines, News papers, and different acts and articles of Indian Laws.

3 Constitutional Frame Work on Labour Rights

There are basic provisions in the Indian constitution relating to the condition of employment, non-discrimination, and right to wok. 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.[8] Our constitution prohibits the discrimination on the grounds of religion, race, caste, sex or place of birth.' There shall be equality of opportunity in matters of public employment!' Migrant labourer are also entitled to form association or unions; to move freely throughout the territory of India; to practice any

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profession or to carry on any occupation, trade or business.' Our constitution safeguards right to life and personal liberty of migrant labourers!' Beggar and other similar forms of forced labour is prohibited and any contravention of the said prohibition shall be an offence punishable in accordance with law.[13] The law concerning the Inter-State migrant workmen emanates from social policy enjoyed in the constitution of India. 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 sub serve 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 necessity to enter evocation unsuited to their age or strength and that the childhood and youth are protected against exploitation and against moral or material abandonment:'

3.1 Labour Laws Applicable to both Migrant Workers and other Workers:

Under the constitution of India, labour is a subject in the concurrent list where both the Central and State Government are competent to enact legislation. As a result a large number of labour laws have been enacted catering to different aspects of labour. Thus we have 44 major labour legislation for the protection of labourers.[15]Migrant workers face additional problems because they have both features i.e. labourers and migrant. Many of the problems faced by migrant labourers are covered by laws and policies in as much as they covers all labourers in a particular sector or industry. Following are the laws applicable to both migrant workers as well as other workers:[6]

- The Minimum Wages Act, 1948- The Act provide for fixing minimum rates of wages in certain employments.
- The Contract Labour (Regulation and Abolition) Act, 1970 - The Act was brought to prohibit the employment of contract labour and to regulate the working condition of the contract labour where such employment not prohibited.
- The Equal Remuneration Act, 1976 - It provides for the payment of equal remuneration to men and women workers and for the prevention of discrimination on the ground of sex.

- The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 - The Act regulates the employment and conditions of service of building and other construction workers and provide for their safety, health and welfare measures
- Workmen's Compensation Act, 1923 - The Act provides compensation for workers in cases of industrial accidents/ occupational diseases in the course of employment resulting in disablement or death.

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- The Payment of Wages Act, 1936 - The Act regulates the payment of wages of certain classes of employed person.
- The Factories Act, 1948 - The Act provides for health, safety, working hours of adults, employment of young persons, annual leave with wages for workers employed in factories employing io or more workers.
- The Child Labour (Prohibition and Regulation) Act, 1986 - The Act ban the employment of children, who have not completed 14 years of age, in certain occupations and processes. The Act also regulates the conditions of work of children in employments where they are not prohibited for work.
- The Bonded Labour System (Abolition) Act, 1976 - The Act abolished bonded labour system and bonded labourers were freed and discharged from any obligations to render any bonded labour and their bonded debts were also extinguished.
- The Employees State Insurance Act, 1948 - In order to provide for certain benefits to employees in case of sickness, maternity and employment injury this Act was passed.
- The Employees Provident Funds and Miscellaneous Provision Act, 1952 - The Act provide for the institution of provident funds, pension fund and deposit-linked insurance fund for employees in factories and other establishment.
- The Maternity Benefit Act, 1961 - In order to provide maternity leave and benefit to women employee the maternity benefit Act was passed .
- Unorganized Sector Workers' Social Security Act, 2008 - The purpose and object of this Act is to provide social security and welfare to the unorganized workers including migrant workers.'

4. The Inter-State Migrant Workmen (Regulation and Condition of Service) Act, 1979

Issues relating to problem of inter-state migrant labour were considered by the twenty eight session of labour ministers conference held on 26th October, 1976. Compact committee was constituted in February 1977. The committee recommended that a separate central legislation may be enacted to regulate the employment of inter-state migrant workmen. The recommendation of the compact committee was examined and the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Bill, 1979 was introduced in the Parliament. It got the assent of the president on nth June, 1979.[18]The main features of the Act are as follow:

- The Act applies to every establishment in which five or more Inter-State migrant workmen are employed on any day of the preceding twelve months; It applies to every contractor who employs five or more Inter - State migrant workmen on any day of the preceding twelve months.'
- Inter-State migrant workmen means any person who is received by or through a contractor in one state under an agreement or other arrangement for employment in an establishment in another

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state.

- The appropriate Government may appoint registering officers. Principle employer of an establishment shall make an application to the registering officer, for the registration of the establishment.'
- Principle employer of an establishment shall not employ inter-state migrant workmen in the establishment without a registration certificate.'
- The appropriate Government may appoint licensing officer and contractor shall not recruit any such person except under and in accordance with a licensee issued in that behalf. A licence may contain the terms and conditions of the agreement or other arrangement under which the workmen will be recruited, the remuneration payable, hours of work, fixation of wages and other essential amenities in respect of the Inter-State migrant workmen, as the appropriate government may deem fit to impose."

- It shall be duty of every contractor to issue to every Inter-State migrant workman, a pass-book indicating the name and place of the establishment, period of employment the proposed rates and modes of payment of wages, the displacement allowance etc.[24]
- It shall be duty of every contract to furnish in respect of every Inter-State migrant workman who ceases to be employed, a return in such form and in such manner as may be prescribed, which shall include a declaration that all the wages and other dues payable to the workman and the fare for the return journey back to his state have been paid.'
    - A contractor is responsible for payment of wages to each Inter-State migrant workman employed by him. Every principle employer is bound to nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor. If the contractor fails to make payment of wager within the prescribed period or make short payment, then the principal employer shall be liable to make payment of the wages to the Inter-State migrant workman.[26]
    - If the allowance and facility specified in section 14, section 15 and section 16 is not given by contractor then such allowance and facility shall be provided by the principal employer.'

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- The appropriate Government may appoint inspectors and define the local limits within which they shall exercise their powers. An inspector may enter premises or place for the purpose of satisfying himself whether the provisions of this Act in relation to the payment of wages, conditions of service or facilities to be provided to such workmen are being complied with. If any person contravenes any provisions of this Act or of any rules made there under regulating the employment of Inter-State migrant workmen, or contravenes any conditions of a license granted under this Act, liable to be punished.28

5.Conclusion: The Labor rights are framed by the Indian Law but the implementation is not perfect due some hurdles, still the unorganized labor facing problems in India. The human rights are common to every citizen in India, but the migrated unorganized labor still struggle to enjoy their minimum human rights in the nation. The laws relating to migrant workmen are only on paper. Inter-State migrant workmen Act is not implemented properly. The main reason for poor implementation of this legislation is that the regulatory authorities are not serious, there is lack of commitment by the State Government, migrant workers are extremely weak and vulnerable and lack support from civil society. The provisions of this Act are not implemented properly by the State Government and more and more Inter-State migrant workers are deployed in bad working conditions. They are being paid very low wages. The vested interest of the principle employers and contractors is the main difficulty to implement this Act properly.

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