

## Process and pattern of labour migration in India: The law and judiciary

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### Abstract

The present phase of development of capitalism has four major dimensions, viz. liberalization, privatization, globalization and marketization. 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. 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. Despite of several acts and regulations, the atrocities and exploitation against migrant labourers are becoming unavoidable because there is a wide gap in the existing legal and policy framework and practical approaches for protecting the welfare of the migrant workers. This present paper is an attempt to understand the emerging migration patterns in India and issues underlying with it. The paper also discuss about labour rights and standards in respect of migrant labour in India. It also tries to highlight the role of Judiciary in order to protect the rights of the migrant workers who are more vulnerable to the violation of their rights than any other distressed section of society.

**Keywords:** migration, law, migrant worker, labour rights, judiciary

### Introduction

#### Migration Trends and pattern in India (A Historical Perspective)

Migration is not new to the human race. Migration has been contributing to economic and social development by enabling man to overcome the tyranny of space. The main driving force behind migration is a better standard of living away from home. In recent decades migration has been taking place amidst increasing global economic, political, and social integration which has been accompanied by greater speed and ease of transportation. It carries human capital to regions of destination, entails investment in the employment of migrants, permits acquisition of new skill and accentuates economic cycle. Contemporary migration often involves short-term, temporary sojourns in the host region. The direction of people's movement has always been guided by the specific need of time <sup>[1]</sup>.

Indian history is full of migratory movements within as well as across the boundary. However, different migratory movements in different phases of history were qualitatively different. Out of a wide panorama of migratory movements we, at the Gandhi Labour Institute were concerned with the issue of seasonal migration of labour, which has emerged in the post-independence period as a result of planned industrial and technological development. Labourers who generally move in groups from one place to another seeking work on a temporary or seasonal basis, without becoming residents of the area where they seek or find such work are known as migrant labour <sup>[2]</sup>.

Seen in the wide sweep of history, labour migration has been an integral and vital part of human development. In fact, the history of migration is as old as man itself <sup>[3]</sup>. At the beginning of human civilization, man was a hunter and food gatherer. He had to wander a lot in search of food. This form of migration was the oldest one and known as primitive migration <sup>[4]</sup>. Migration of labour started in India during the British rule,

mostly of persons pauperised by economic and social processes operating in the country <sup>[5]</sup>. It is generally believed that the class of landless labourers was created during the British rule in India. During that period, the flooding of India with foreign manufacturers, destroyed domestic industries, and so drove the artisans on the land. The British introduced a system under which land revenue was assessed at high rates and was payable in cash which held individuals responsible for payment. These landless poverty stricken labourers began to migrate to various colonies like British Guiana, West Indies & Mauritius. There was acute shortage of labour in the British colonies and it was the Indian Labourers who were sought to be introduced in the plantation of these colonies. Poverty-stricken Indian Labourers were exported to such colonies. Thus, the emigrant Indian labour was victim of brutal colonies exploitation.

Throughout the 19th century the British India witnessed a formidably growing unemployment in the ranks of the landless poor masses with the steady decline of traditional economy along with rapid growth of population. It was these destitute masses who migrated from India to overseas British colonies as indentured labour. Available data indicate that during 1870 more than half a million labourers –men, women and children collected from various parts of India were exported to British Colonies <sup>[6]</sup>. In the 20th century, a new type of mass migration has sprung up, in which the most powerful current is from rural to urban areas. After the advent of Industrialization, this is the most dominant pattern of migration. Therefore, every historical phase has its own pattern of migration <sup>[7]</sup>.

The Census of India, 2001 has used two parameters migrants by place of birth and migrants by the place of last residence to collect data on migration. According to the Census report, about 31 percent (307 million) persons fall under migration by the place of birth, slightly higher than the persons (27 percent), who migrated in 1991. Out of the persons, who migrated, about

14 percent were inter-state migrants during the decade 1991-2001. Out of total 98.3 million persons migrating by the place of the last residence, 80 million persons were intra-state migrants, whereas about 16.83 million (21 percent) persons were inter-state migrants. Rural to urban migration stream has reported the highest percentage (38 percent). It was followed by urban to urban stream (26.7 percent) and urban to rural areas (6.3 percent). During this decade, the urban population growth added 30.3 percent, of which migrated persons added 6.6 percent to the total growth rate.

The Census data 2001 on migration depicts that the highest percentage of 'Out migration' was reported in rural-rural migration stream for intra-state, as compared with inter-state migration. About 61 percent migrants moved from rural areas to rural areas within state, while 26 percent migrants moved in other states in same migration stream. In regard to inter-state migration, the highest percentage was reported in rural-urban migration stream, which accounts for 38 percent, whereas about 18 percent persons moved within states. The second largest mobility of persons was reported in urban to urban migration stream, which constitutes 27 percent its dominance in total number of out-migrants moved from rural to rural stream, urban-urban migration accounts for 12 percent in intra-state migration.

The highest female out-migration than male is found in all migration streams. But, rural to rural migration within state is comparatively higher among all migration streams. In

percentage term, about 69 percent female migrated from rural area to rural area, which is higher by 27 percent than percentage of male migrants (42 percent). Even in case of inter-state migration, the percentage of female migrants was reported for about 33 percent, which was also higher by 12 percent than male migrants.

Male migrants dominated intra-state as well as inter-state migration in rural-urban migration. However, migrants most preferably migrate in other states in a large number. In percentage term, about 45 percent male migrated in other states and 27 percent for both male and female in intra-state and inter-state migration. In case of urban to urban migration, female dominance is prevalent in inter-state migration, while male dominance in intra-state<sup>[8]</sup>.

Census 2011 is the 15th National Census of the country. India's total population stands at 1.21 billion, which is 17.7 per cent more than the last decade, and growth of females was higher than that of males. Altogether, 833.5 million persons live in rural area as per Census 2011, which was more than two-third of the total population, while 377.1 million persons live in urban areas. Urban proportion has gone up from 17.3 per cent in 1951 to 31.2 per cent in 2011. Highest proportion of urban population is in NCT Delhi (97.5 per cent). Top five states in share of urban population are Goa (62.2 per cent), Mizoram (52.1 per cent), Tamil Nadu (48.4 per cent), Kerala (47.7 per cent) and Maharashtra (45.2 per cent).

Table 1: Census Data 2011

Population & decadal change by residence (2011) persons					
Total Population	Rural	Urban	Percentage decadal changes 2001-2011		
1,21,05,69,573	83,34,63,448	37,71,06,125	17.7	12.3	31.8
Population & decadal change by residence (2011) males					
62,31,21,843	42,76,32,643	19,54,89,200	17.1	12.1	29.8
Population & decadal change by residence (2011) females					
58,74,47,730	40,58,30,805	18,16,16,925	18.3	12.5	34.0

**Causes of Migration in India**

According to various research studies different reasons have been assigned which are determinants of migration. Francis Cherunilam presents five broad factors which cause migration, viz.:

- (i) Economic factor;
- (ii) Demographic factor;
- (iii) Socio-cultural; and Psychological;
- (iv) Political and Institutional factor; and
- (v) Miscellaneous factors.

The National Commission on Rural Labour has attributed various reasons giving rise to both pull and push factor causing migration of labourers. The report observes that uneven development is the most important reason for both pulls and push factors. The uneven development has two major dimensions-one is inter-regional disparity in economic growth and other is the disparity between different socio-economic classes. Unevenness has its historical roots, trends in economic growth since independence, and this seems to have accelerated the migration phenomenon. Better employment opportunities and consequent economic hardship in the under-developed or undeveloped regions acts as push factors in the migration process. Besides economic reasons there are other social factors in the migration which accelerate migration, for instance cast factor is one of the important

reason which is the resultant casual factor of oppressive behaviour of the land-lord and high cast peoples towards the poor also seems to be contributory factor in accelerating the process of migration<sup>[9]</sup>.

The causes of migration vary from region to region due to regional differences in economic activities, natural resources, social and cultural differences and impact of various developmental activities. The several important causes are as follows, securing employment, better prospects, better employment, in adequacy of land, loss of land, low income, education, dire famines, caste system and family disputes. Numerous factor of economic, social, cultural and demographic character have been identified and their combinations considered motivating internal migration. But so far, a single factor, or a combination of particular factors, has not accepted universally to be the most predominant one. However, generally speaking, economic factors have been emphasized by the social scientists as the primary important motive of internal migration<sup>[10]</sup>. Migration in India has largely been fuelled by Push and Pull factors, the increasing regional disparities and urban bias in economic planning. Urbanisation is one of the key dimensions in the modernization process of a society. Several studies have shown that small cultivators and landless migrate to urban centres for work<sup>[11]</sup>.

Migration can be explained simply as the movement of people

from their place of origin to other countries or regions. Migration take place on large scale in India and in other countries for various reasons, Migrations can be divided into internal and external migration .External migrations are when people from a particular country cross their national border and migrate to other countries. An example of external migration is people from nations like Mexico, India and others to the United States of America .Internal migration may be of different types. There may be rural to urban, urban to rural, interstate and intrastate. Internal migration is when people move from one state to another within a country. That is, people move from one region to other regions in search of work and other reasons.

The principle factors governing their decisions to migrate are:

1. Failure of agriculture and rural economy;
2. Economic state of rural population and impact of development;
3. Natural causes;
4. Socio-economic discrimination and displacement of backward classes;
5. International changes.

The first four deal exclusively with India as far as possible while the fifth point also talks about international population movements. These are very broad based reasons for the migration of people.

### **Labour Rights and Labour Standards for Migrant Labour in India**

In all countries employment enters into a basic need strategy both as a mean and as an end. Employment yields an output. It provides an income to the employed. And it gives the person the recognition of being engaged in something that is worth his while <sup>[12]</sup>. The public Conscience was awakened by the ghastly in human conditions of life and work .It led to a re-examination of the purpose and functions of the state. This new trend of thought laid to the foundation of the welfare state. In a welfare state, all are assured of adequate help in case of need which may due to illness, old age, physical or mental handicap, or unemployment. State assistance is given as a right, not as a charity and no stigma of pauperism are attached to those who receive it <sup>[13]</sup>. As regard the necessity of welfare work in India it can be easily realised by looking into the conditions of working classes in our country. They have to work for long hours under unhealthy surroundings and afterwards, have no means to remove the drudgery of their lives. The importance of the welfare work is, therefore, greater in India than in the west.

The origin of welfare work in India may be traced on the war of 1914-18. Till then, the welfare of the workers was hardly thought of, owing to the ignorance and illiteracy of the workers themselves, and the short-sightedness of the employers, the carelessness of the state and the indifference of the people. But since the First World War, it has been steadily recognised mostly on voluntary basis. Till the Second World War, very little was done by the Government of India in the field of labour welfare. After this, a number of enactments containing the provisions for the welfare of the workers were passed by the government of India <sup>[14]</sup>.

The Ideals of the welfare state is embedded in the Directive Principles of state Policy as enunciated in the Constitution of the Republic of India. They are the principles on which the Republic of India is founded and give direction to the state

action in unambiguous terms. Translated into practice, they will make our country a Welfare state <sup>[15]</sup>. The Directive Principles spell out the socio-economic objectives of the national policy to be realized by labour legislation as well as by other legislations. These are directives to the legislature, executive and the judiciary, which are committed to make, interpret and enforce law <sup>[16]</sup>.

Labour Laws are the innovation of 20<sup>th</sup> Century in the industrial world and evolved to correct the imbalance and socio-economic disparities created due to the free-hand given to the employers, by then prevailing Political and Economic System governed by Laissez Faire Philosophy, to meet inhuman treatment to workers in form of long working hours ,bad working conditions ,low wages, the employment of children below the age of 7 years, and also no job security under hire and fire policy of employment .In essence the Labour Laws are the laws designed to ameliorate the conditions of labour ,establish industrial peace, ensure increase in productivity & production by creating conditions leading to the efficiency of labour and to promote mutual understanding between labour and management basing it in mutual trust and cooperation. These laws have the following aims and objectives:

1. Establishing the state as the custodian of all interests relating to consumers, employees, employers and the economic development. In all the Labour laws the state provides machinery for their effective implementation and the enforcement.
2. Recognition of right of workers to peaceful direct action if justice is denied to them.
3. To provide for fair wages, regular payment of wages, sharing of profits and for the adequate measures of social security.
4. To provide for appropriate machinery for the effective and expeditious settlement of disputes.
5. To provide for good working conditions leading to increase the efficiency level of workers necessary for increasing production and productivity.
6. To encourage and maintain industrial peace.
7. To promote co-operation and mutual trust and to raise the status of workers.

To achieve all this various Labour Laws have been enacted from time to time which can be categorised as under <sup>[17]</sup>.

The labour legislation's is a result of evolution of the concept of social Justice. Therefore, the nature of labour legislation reflects the social economic and political ideas current at a given time. Public policy of the executive and social philosophy of judges is likely to influence the evolution of labour legislation. The philosophy underlying labour laws is to admire justice, not only by interpreting existing law but also by creating new law by taking light from public policy and current social climate. Thus, the labour legislation reflects the current social values of a community .The best of today may become the minimum after a decade. Values change and so does legislation <sup>[18]</sup>.

The Labour Investigation Committee of the Government of India clears the scope of the welfare activities perhaps in the best manner. It says, "For our part we prefer to include under welfare activities anything done for the intellectual, physical, moral and economic betterment of the workers whether by the employers, by the Government of by other agencies, over and above what is laid down by law or what is normally expected

as a part of contractual benefits for which the workers may have bargained.

Thus, under this definition we may include housing ,medical and educational facilities, nutrition(including provision of canteen) facilities for rest and recreation, co-operative societies ,day nurseries and crèches, provision for sanitary accommodation, holiday with pay, social insurance measures undertaken voluntarily by employers, alone or jointly with workers ,including sickness and maternity benefit schemes, provident fund, gratuities and person etc. In order to preserve the minimum standards of health and safety of workers of the workers, the government enacts certain rules which may be abided or followed by the employers. They may relate to certain essential working conditions like hours of work, light, hygiene and sanitation etc. <sup>[19]</sup>.

In India, Labourers can be classified into two main categories,

- Organised Labour and
- Unorganised Labour

The labour in organized sector has received benefits, which at times look excessive due to their organized strength and strategic importance. While in the unorganised and informal sector the workplace is scattered and fragmented. There is no stability and durability of employment. Hours of work are not fixed but depend on the extent to which work is available at a particular place or point of time. The nature of work also keeps on changing as also the workplace. Very often basic tools and equipment's which are essential for optimal production and productivity are not made available and the workers in the unorganised/informal sector remain helplessly dependent on the principal employer or on the contractors or sub-contractor both in terms of supply of basic tools and equipment as also in terms of opportunities, facilities and incentives for a proper work environment which will be conducive to high productivity. In such a diffused situation human rights suffer as the worst causality either on account of pervasive ignorance of both the employer as well as the workers <sup>[20]</sup>.

The Migrant labour falls under the unorganised Labour sector. These workers remain mostly unprotected by law, as many of the laws don't apply to them. Thus though majority of the women workers are employed as agriculture workers or in construction, they don't have any maternity benefits. There are no paid holidays, leave, sick leave, medical or accident benefits, old age pension or provident fund or even the basic security of jobs. There are no annual increments, bonus or promotions etc. for these hapless workers .The conditions of work are miserable without drinking water, toilets, safety equipments etc. Many agricultural and forest workers die of rat or snake bites while on work but get no compensation. They do not get protective devices like boots while working in wet lands and develop fungus on feet. But the trade unions busy in protecting their already over protected members hardly come to the rescue of this section of labour <sup>[21]</sup>.

The government has initiated several measure since independence to ameliorate their condition by passing various Acts which are concerned with labour or migrant labour. The Indian Constitution, the legislators of this country have made their earnest and valiant efforts to march towards the attainment of socio-economic justice, different major acts has been enacted, some major Labour Legislations are mentioned below.

1. The Payment of Wages Act, 1936

2. The Minimum Wages Act, 1948
3. The Industrial Dispute Act, 1947
4. The Contract Labour (Regulation and Abolition) Act, 1970
5. Child Labour (Prohibition and Regulation) Act, 1986
6. The Equal Remuneration Act, 1976
7. Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979
8. The Maternity Benefit Act, 1961
9. The Workmen's Compensation Act, 1923
10. The Employees' State Insurance Act, 1948
11. Bonded Labour System (Abolition) Act, 1976

### **Judicial Headway to Protect the Rights of Migrant Labour**

In spite of the incorporation of various provisions for Labour welfare in the international documents, the Constitution of India and Labour Welfare Legislations, the exploitation of the labour especially those in the unorganised sector, by the employer, persists even today in our country. The techniques of exploitation by the employer take several forms like evading the clutches of labour welfare legislation by narrow and orthodox interpretation of the provisions, keeping workmen as casuals for long years, reluctance to promote the welfare for workers under the pretext of financial stringency, the Supreme Court has, on many occasions, emboldened itself to bridle the exploitative tendencies of the employer and espouse the cause of labour <sup>[22]</sup>.

Despite heightened importance of the Humane dignity in the preamble of the Constitution of India .The term "human dignity" has not been used in the other Articles of the Constitution expressly, but it is imbedded in its various Articles of the Constitution expressly, but it is imbedded in its various Articles impliedly. The Judiciary has fulfilled the responsibility of legislature in this regard, by making certain observations which may be helpful in searching the concept of "human dignity" in the Constitution of India <sup>[23]</sup>. Judiciary in India evolved Human Rights Jurisprudence in various areas affecting labour as is clear from the analysis of the various cases of the Supreme Court and High Courts.

### **In case Francis Coralis Mullin v Administrators, Union Territory of Delhi** <sup>[24]</sup>,

the court observed: " We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life..." Accepting that the "the magnitude and content of the components of this right would depend upon the extent of the economic development of the country", the court continued that "it must, in any way of the matter, include the right to the basic necessities of life and also to carry on such functions and activities as constitutes the bare minimum expression of the human-self. Every act which offends against or impairs human dignity would constitute deprivation protanto of this right to live and it would have to be in accordance with reasonable, fair and just procedure established by law which stands the test of other fundamental rights".

### **In case of People's Union of Democratic Rights v Union of India and others** <sup>[25]</sup> the Supreme Court ordered that the Govt.

of India, D.D.A and Delhi Administration should ensure that the minimum wages is paid to workers by the contractors and provisions of section 16 to 20 of Contract Labour (Regulation &Abolition) Act, 1970 are also observed. C.J., P.N Bhagwati observed that time has come when the courts must become the

courts for the poor and the struggling masses of the country. The poor too have civil and political rights and the Rule of Law is meant for them also.

***In Oliga Tellis & others v Bombay Municipal Corporation,*** <sup>[26]</sup> the Supreme Court linked the right to life to right to livelihood. If right to livelihood is not treated as a [art of the constitutional right to life, then the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood.

***In National Textile Workers Union v P.R Rama Krishnan,*** <sup>[27]</sup> the Supreme Court emphasizes that the workers have right to be heard in winding up proceeding of the company because bread is taken out of their mouth. The court rightly quoted from 'Shakespeare's Merchant of Venice' -

*'You take my life when u do take the means Whereby I live'*

***In Sanjit Roy v State of Rajasthan ,*** <sup>[28]</sup> the Supreme Court has struck down the Rajasthan Famine Relief Works Employees (Exemption from Labour Laws) Act ,1964, on the ground that this Act excludes the applicability of the Minimum Wages Act,1948 to workmen employed on famine relief works and permits payment of less than the minimum wage to such workmen, it must be held to be invalid as offending the provisions of Article 23. In his conquering judgment, Justice Pathak preferred to rest his decision on the ground that there is a breach of Article 14 of the Constitution.

**Further in *Neerja Chaudhary v State of Madhya Pradesh,*** <sup>[29]</sup> the Supreme Court has stressed the need of rehabilitation of Bonded Labour. Neerja Chaudhary invoked the post-Maneka Concept Article 21 to secure effective rehabilitation as their right to live with human dignity. Justice Bhagwati said that it is the plainest requirement of Articles 21 and 23 of the Constitution that bonded labourers must identified and on release they must be suitably rehabilitated.

The Courts too have not lagged behind in achieving a state of social welfare and as such keep on striving to serve the cause of poor and weaker section of the society <sup>[29]</sup>. The Judiciary in India has taken a lead, in protecting and enforcing the rights, entitlements, claims, etc. of the labour class of introducing the notion of public interest litigation. Here is an attempt to study the judicial approach in securing the rights, claims, etc. of hapless section of the society through public or social action litigation.

***In Peoples Union for Democratic Rights v Union of India (Asiad case),*** <sup>[30]</sup> A writ petition was moved in the Supreme Court of India by way of public interest litigation in order to ensure the observance of the provisions of various enactments of Labour Laws such as Employment of Children Act, 1938, Industrial Dispute Act, 1947, Minimum Wages, 1948 in relation to the workmen employed in the construction of various projects connected with Asian Games. Here a class of people, i.e. the construction workers were not paid their minimum wages .Some indecent device was adopted by which minimum wages of workers were reduced. They were just making both ends meet. The extreme poverty and destitution was playing at their backs. Hence they were unable to seek justice through the courts of law. If someone else did not espouse their cause they would have to go without redress and

their grievances would have remained unredressed. The court further observed:

The state is under constitutional obligation see that there is no violation of the fundamental right particularly when it belongs to the weaker section of the community and is unable to wage a legal battle against a strong and powerful opponent who is exploiting him. The central government is, therefore, bound to ensure the observance of various social welfare and labour laws, enacted by Parliament for the purpose of securing to workmen life of basic human dignity in compliance with the Directive Principles of State Policy.

The Supreme Court entertained the Writ Petition for the benefit of group of persons ,who were the victims of exploitation and oppression and were denied their Constitutional and legal rights. Justice Bhagwati, in no way, allowed the violation of any of the provisions of Labour Laws. He therefore, maintained:

If violations of Labour Laws are going to be punished only by meagre fine it would be impossible to ensure the observance of the Labour Laws would be reduced to nullity. They would remain merely paper-tiger without any teeth and claws. Violation of labour law must be viewed with strictness and whenever any violation of labour laws are established the errant employer should be punished by imposing adequate punishment.

***In Labourers Working on Salal Hydro Electric Project v State of J&K,*** <sup>[31]</sup> A relief by way of Public Interest Litigation was sought for labourers employed by contractors and sub-

contractors of government projects regarding implementation of labour welfare legislations for the benefit of these deprived persons. It was an interesting case involving provisions of Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, Contract Labour (Regulation and Abolition) Act, 1976. Employment of Children Act,1938,Minimum Wages Act,1948 and Bonded Labour System (Abolition)Act,1976. Justice Bhagwati, while delivering the judgment, vigorously emphasised the necessity of complying with the provisions of Contract Labour Act.

The Learned Judge further reiterated that welfare amenities required to be providing under these statutes to be made available to the workmen employed on the project. There is no denying of the fact that so long as the poverty continues to exist in India; it is difficult to absolutely eradicate the child labour from our society.

***In another significant case of Bandhu Mukti Morcha V Union of India,*** <sup>[32]</sup> Supreme Court did not hesitate to treat a

letter addressed to it by a person acting *probono public* as a writ petition by way of public interest litigation for the enforcement of fundamental rights of certain workmen living in bondage and under inhuman living conditions. Article 23 of the Constitution prohibits traffic in human beings and beggars and other similar form of forced labour. The system of bonded labour stood prohibited by Article 23 of the Constitution. Shockingly the petitioner in this case made a survey of some stone quarries in Faridabad district of Haryana state and found that there were a large number of migrant labourers from Maharashtra, Madhya Pradesh, Uttar Pradesh and Rajasthan who were working in these quarries under inhuman and miserable conditions and many of whom were bonded labourers.

Justice Bhagwati while entertaining the petition vehemently advocated: "Public Interest Litigation is not in the nature of adversary litigation, but it is a challenge and opportunity to the Government and its officers to make basic human rights meaningful to the deprived and the vulnerable section of the community and to assure them socio-economic justice, which is the signature tune of our Constitution.

In October 1985, one more story about migrant workers appeared in press. *Writ petition (Criminal)No 1608/84 under article 32 , Nagendra Dutt and state of UP*, It were told that a hundred of labourers working on a government project in Uttar Kashi , Uttar Pradesh were being kept in a tin cage. The Supreme Court had directed the District Judge of Tehri Garhwal to investigate the allegations made in a Public Interest Writ Petition by two lawyers from Uttar kashi. In his report the District Judge has indicted at least two government servants, namely the Labour Inspector of the Government of UP and the General Manager of the National Project Construction Corporation, a public sector company. The District Judge has recorded that both of them lied to him about the true state of affairs and tried to convince him that there was no migrant labour, that there was no violation of any labour laws.

The sub-divisional Magistrate of Uttar Kashi is also mentioned. He told the District judge that he had visited NPCC and the conditions of labourers had improved. But on visiting the site the District Judge found many labourers from Orissa and Bihar, including some women and some children less than 14 years of age. The contractors had no licences under the Interstate Migrant Workmen (Regulation of Employment & Conditions of Service) Act, 1979, they were grossly unpaid and in violation of every possible law they were being kept in hell-hole<sup>[34]</sup>.

***In case Rajan Kudmbathil v Union of India,***<sup>[35]</sup> This writ petition has been filed by an Advocate practicing in this court (Kerala High Court). He highlights the problems now being allegedly faced by migrant labourers who come to this State in search of job opportunities.

When this writ petition had come up for consideration on July 13, 2009 the following direction was issued by this court:

1. Respondents shall ensure that a proper study or assessment is made as regards the migrant labourers who are eking out their livelihood in various parts of the State of Kerala.
2. A methodology shall be evolved to get these workers registered at the Panchayat / Corporation/District level with provision to issue photo identity cards, making it mandatory for employers to report about such migrant workers to the competent authority, if these workers are engaged by them.
3. A comprehensive programme for providing these migrant workers basic amenities can be considered by the Government under a scheme which can be drawn up for this purpose in tune with the provisions contained in the 1979 Act.
4. Respondents shall ensure that the order dated July 12, 2009 which is extracted above, is implemented without any further delay.
5. Steps shall be taken to constitute the Board as provided under the 2008 Act.

A careful scrutiny of above mentioned cases indicates the constant stand of the Supreme Court of India, that it would not

wait behind in rendering social justice in cases of violation of any of the provisions of the labour laws involving the exploitation of penniless labour in the hands of strong and powerful adversary. It would not be out of place to mention that the Supreme Court while entertaining petition by way of public interest litigation has enriched the labour law jurisprudence. It seems that the new industrial jurisprudence is also emerging. A close examination of the above said cases demonstrate that the Apex Court has taken an extremely serious note of the abuse of the migrant workers on one hand and non-observance of various labour laws on the other hand. In these cases the Supreme Court through Public Interest Litigation issued directions to the concerned authorities and the contractors for the exploitation of the migrant workers as well as gearing up the governmental machinery to observe and promote the labour laws meant for welfare of the migrant workers.

It evident that the existence of provisions for labour welfare in the international human rights documents, the Constitution of India and labour welfare laws cannot , by itself, promote labour welfare, because of the ever-widening dimensions of the exploitative tendencies of the employer. Only judicial pronouncements, like the mentioned above can curb the exploitative tendencies of the employer and ensure labour welfare<sup>[36]</sup>

### Conclusion

The labour legislation is the paramount effort of the community which has granted a real equality to workmen. But mere passing of laws does not guarantee their proper implementation. Efficient and honest administration is equally important. Again, in rapidly developing countries like India where economic and social progress has been hastened, there is a greater need of social consciousness in different groups of the community. So, long as people don't willingly accept their social responsibilities, they will always find loopholes in statutory enactments and ways to bypass them.

The employers and employees as well as their organizations should feel convinced about the usefulness of statutory measures and should give their willing co-operation in proper implementation of a various Acts. A proper administrative set-up with zealous, honest and capable men needs no case to be made. The Judicial machinery should be headed by judges with enlightened social philosophy. Disposal of cases by Labour courts should be speedy and they should be within the reach and understanding of ordinary workers. Continuous evaluation and research will keep the scientific approach to real needs alive and should be developed. All these measures, if promoted by the state, will make labour legislation really effective and take it nearer to its objectives<sup>[37]</sup>.

### Reference

1. Singh Surjit. Migration in India: Some Evidence from States, Iyer Gopal. K ed, *Migrant Labour and Human Rights in India*, Kanishka Publishers, New Delhi, 2003, 214.
2. Joshi Vidyut, *Migrant Labour and Related Issues*, Oxford and IBH Publication, New Delhi, 1987,p1.
3. Dash .R.C and Tripathy .S.N, *Migrant Labour In India*, Discovery Publishing House, New Delhi ,2013,p55.
4. Joshi Vidyut, "Labour Migration: Some Socio-economic Issues", Joshi Vidyut (ed),*Migrant Labour and Related*

- Issues*, Oxford and IBH Publication, New Delhi,1987,p11.
5. Singh Inderjit, "Policy, Legislative and Administrative, Measures with Special Reference to Inter-State Migrant Workmen's Act,1979,Joshi Vidyut (ed), *Migrant Labour and Related Issues*, Oxford and IBH Publication, New Delhi,1987,p223.
  6. Supra3 p1,2.
  7. Rajeshwaran .M, 'Inter-state Migrant Workers In India With Special Reference to Construction Industry in Chennai-A Socio-Legal Study',Dr B.R Ambekar Law University Tamil Nadu, Phd Thesis, 2015,November,p42.
  8. Thaware .C. Kailas, " Inter-state Migration in India: Nature, Causes and Consequences", Bagchi .K.K(ed.) ,*Internal Migration In India Nature, Determinants and Consequences*, Abhijeet Publications, New-Delhi,Vol I ,2013,p377-379.
  9. Singh Gurdeep, *Migrant Workmen and the law*, Deep and Deep Publications, New Delhi, 1992, p 19, 20.
  10. Sharma Cheshta, 'Migration ,Economic Opportunities and its consequences, A study of Agricultural Labour Migrants in R.S Pura Block of Jammu District', university of Jammu, Phd thesis,2007,june,p34,35.
  11. Supra1, p215.
  12. Pai BG. Social Welfare Legislation in India: An Overview, Siddiqui Shahid. M.Z & Wani Afzal. M ed, *Labour Adjudication in India*, Shawn offset Press, New Delhi, 2009, p25.
  13. Vaid NK. *State and Labour in India*, Asia Publishing House, Bombay, 1965, p2.3.
  14. Supra 9, p144.145.
  15. Supra 13, p4.
  16. Srivastava CS. *labour law in Factories, Mines, Plantation, Transport, shops & other industrial Establishments*, Prentice Hall of India, New Delhi, 1992, 37:38.
  17. Gupta NH. Human Rights and Labour Legislations in India in Perspective of Industrial Labour and Socio-economic Justice, Journal of Legal Studies, XXVIII,1998,p80.
  18. Supra 13 p7, 8.
  19. Supra 9, p141. 142.
  20. Mishra L. Unorganised Labour and Human Rights, Journal of the Institute of Human Rights, 2000; 3(10):11-12.
  21. Sonarika Sunanda, Labour Implementation and Human Rights, Journal of the Institute of Human Rights, 2000; 3(10):88.
  22. Paul Valsamma, Supreme Court and Labour Welfare- New Trends, Cochin Law Review, XXII, 1998, P161.
  23. Singh SK. *Bonded Labour and the Law*, Deep and Deep Publications, New Delhi, 1994, p37.
  24. 1981 1SCC 608.
  25. 1982 II LLJ455.
  26. AIR 1986 SC180.
  27. AIR 1983 IL ,L J 45(SC)
  28. AIR 1983 SC 328
  29. AIR 1984 SC 827-28
  30. Supra 9, p 29.
  31. AIR 1982 SC 1473.
  32. (1984)3 SC 538.
  33. AIR 1984 SC 802.
  34. Dhamgamwar Vasudha. Migrant Labour and the Law, Joshi Vidyut ed, *Migrant Labour and Related Issues*, Oxford &IBH Publishers, p212.
  35. WP C No.15393 of 2009(S), <https://indiankanoon.org/doc/1976351/>.
  36. Supra 22, p 169.
  37. Supra 13, p13.