

Role of Indian Judiciary in Protection of Rights of the Migrant Workers

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Abstract: People migrate from one place to another for different reasons and they face various problems due to migration. In India, migration is intimately linked to poor socio-economic conditions of family. The constitution of India provides numerous safeguards for the protection of workers' rights which includes migrant workers. Article 14, 16, 19, 21, 23, 24, 39, 39A, provides important safeguards for the protection of migrant labour rights. Article 39, 39A, 41, 42, 43 and 43A collectively can be termed "Magna Carta of working class in India. A large number of labour laws have been enacted catering to different aspects of labourers. There are 44 major labour legislation for the protection of labourers. Migrant workers face additional problems because they have both features i.e. labourers and migrant, thus Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 was passed by both the houses of Parliament and President of India gave his assent on 11.06.1979. According to this Act inter-State migrant workman" means any person who is recruited by or through a contractor in one State under an agreement or other arrangement for employment in an establishment in another State, whether with or without the knowledge of the principal employer in relation to such establishment.¹ This Act applies to every establishment in which five or more Inter-State migrant workmen (whether or not in addition to other workmen) are employed or who were employed on any day of the preceding twelve months; to every contractor who employs or who employed five or more Inter-State migrant workmen (whether or not in addition to other workmen) on any day of the preceding twelve months.² The Supreme Court and High Courts in several cases has directed the Union and State Governments to implement impressively all provisions of labour laws especially those enacted for protection of migrant from harassment and exploitation etc.

Keywords: Contractors, Labourer, Migrant, Principle Employers, Rights, Wages.

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I. INTRODUCTION

Every developed legal system possesses a sound judicial system. The constitution of India declares it to be sovereign, socialist, secular, democratic republic. It also wants to remove social and economic disparity. The success of Indian Judiciary on constitutional front is unparalleled and its contribution in enlarging and enforcing human rights is appreciated. The main function of the judiciary is to adjudicate the rights and obligations of the citizens. In India, the role of judiciary is significant. Judiciary administers and promote justice according to law. Under the Indian Constitution, the Supreme Court is the guardian of the fundamental rights of the people. The Supreme Court plays the role of 'guardian for the social revolution in India. Judicial activism through a process known as Public Interest Litigation has emerged as a powerful mechanism of social change in India. The Public Interest Litigation empowers ordinary citizens to write a letter and draw the attention of the Supreme Court. Judicial action initiated through these written petitions has given justice to the migrant workers. The Public Interest Litigation has become an important part of the judicial system in India. Judicial activism may continue to force the government to act for the welfare of weaker section like migrant workers. Whenever migrant labours have been denied their rights, in such a situation judiciary works as protector for migrant labourers' rights. Hence the Supreme Court and High Courts have played an important role in eliminating exploitation and discrimination against the migrant labour. Various rights of migrant workers have been recognized by Supreme Court as well as by the High Courts in its various judicial decisions.

Role of Indian Judiciary

In *People's Union for Democratic Rights and others v. Union of India*³ the Supreme Court of India held that Magistrate and Judges in the Country must view violation of labour laws with strictness and whenever any violations of labour laws are established before them, they should punish the errant employers by imposing

adequate punishment. The labour laws are enacted for improving the conditions of workers and the employers cannot be allowed to buy off immunity against violation of labour laws by paying a paltry fine which they would not mind paying, because by violating the labour laws they would be making profit which would far exceed the amount of the fine. If violations of labour laws are to be punished with meagre fines, it would be impossible to ensure observance of the labour laws and the labour laws would be reduced to nullity. They would remain merely paper tigers without any teeth or claws.

In *Bandhua Mukti Morcha v. Union of India*⁴ the court held that the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, by Sub-Section (4) of Section (1) applies to every establishment in which five or more Inter State Migrant Workmen are employed or were employed on any day of the preceding twelve months and so also it applies to every contractor who employs or employed five or more inter-state Migrant workmen on any day of the preceding twelve months. "Clause (e) of sub-section (1) of the section (2) defines "inter-state Migrant Workmen" to mean "any person who is recruited by or through a contractor in one state under an agreement or other arrangement for employment in an establishment in another state, whether with or without the knowledge of the principal employer in relation to such establishment." The court said that in addition to the rights and benefits conferred upon him under the Inter-State Migrant Workmen Act and the Inter-State Migrant Workmen Rules, an inter-state migrant workman is also, by reason of section 21, entitled to the benefit of the provisions contained in the Workman's Compensation Act 1923. The Payment of Wages Act 1936, The Employees' State Insurance Act 1948, The Employees' Provident Funds and Misc. Provision Act 1952, and the Maternity Benefit Act 1961.

In *Hind Mazdoor Sabha v. District Collector*⁵, Bench of M.P. Thakkar, C.J. and A. Qureshi J. delivered the judgment and gave various direction. The court said that slavery has been outlawed in all civilized countries and the constitution of India does not countenance it. And yet it appears that the plight of unemployed workers seeking an honourable means of livelihood is made miserable by unscrupulous contractors who exploit the helpless workers. It virtually amounts to compelling them to work as slaves.

In *Labourers working on Salal Hydro-Project v. State of Jammu & Kashmir*⁶, allowing the petition the Supreme Court of India held that the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 was enacted with a view to eliminating abuses to which workmen recruited from one state and taken for work to another state were subjected by the Contractors, Sardars or Khatedaras recruiting them. The Act and the rules framed thereunder came into force with effect from October 2, 1980 and became applicable to the establishments pertaining to the project work. It was felt that since Inter State Migrant Workmen are generally illiterate and unorganised and are by reason of their extreme poverty, easy victims of these abuses and malpractices, it was necessary to have a comprehensive legislation with a view to securing effective protection to Inter State Migrant Workmen against their exploitation and hence the Inter State Migrant Workmen Act was enacted.

In *Dr. Damodar Panda etc. v State of Orissa etc.*⁷ the Hon'ble Supreme Court held that Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979 is a beneficial legislation for satisfying the provision of the Constitution and the obligation in international agreements to which India is a party.

In *Morgina Begum v. Managing Director, Hanuman Plantation Ltd*⁸ the Supreme Court held that the Amended Section 21 of the Workmen's Compensation Act, 1923 has been specifically introduced in the Act by amending Act No. 30 of 1995 with effect from 15th September, 1995 in order to benefit and facilitate the claimants. The idea behind introduction of this amendment is that migrant labourers all over the country often go elsewhere to earn their livelihood. When an accident takes place then in order to facilitate the claimants they may make their claims not necessarily at the place where the accident took place but also at the place where they ordinarily resides. This amendment was introduced in the Act 1995. This was done with a very laudable object, otherwise it could cause hardship to the claimant to claim compensation under the said Act. It is not possible for the poor workmen or their dependents who reside in one part of the country and shift from one place to another for their live lihood to necessarily go to the place of the accident for filing a claim petition. It may be very expensive for claimants to pursue in such a claim petition because of the financial and other hardship. It would entail the poor claimant traveling from one place to another for getting compensation. Labour statutes are for the welfare of the workmen. This court has in the case of *Bharat Singh Vs. Management of New Tuberculosis Centre, New Delhi and Ors.* (1986) 2 SCC, 614 has taken the view that welfare legislation should be given a purposive interpretation safeguarding the rights of the have-nots rather than giving a literal construction. In case of doubt the interpretation in favour of the worker should be preferred.

In *S. Sethu Raja v. The Chief Secretary, Government of Tamil Nadu*⁹ the Hon'ble Mr. Justice V. Ramasubramanian of the Madurai Bench of Madras High Court said in this case that the United Nation General Assembly adopted a convention known as "International Convention on the Protection of the Rights of All Migrant Workers and the Members of their Families, 1990" by resolution No. 45/158 dated 18.12.1990. The said convention elaborate the human rights standards to which migrant workers are entitled. It appears that the

said convention entered into force on 01.07.2003 after its ratification by the 20th Country, India does not appear to have ratified the convention. Yet, in my view, it would be useful to make a reference to Article 71 of the said convention, which reads as follows: “1. States Parties shall facilitate, whenever necessary, the repatriation to the state of origin of the bodies of deceased migrant workers or members of their families. As regards compensation matters relating to the death of a migrant worker or a member of his or her family, states parties shall, as appropriate, provide assistance to the persons concerned with a view to the prompt settlement of such matters. Settlement of these matters shall be carried out on the basis of applicable national law in accordance with the provisions of the present convention and any relevant bilateral or multilateral agreements.”

In *Tradeline Enterprises Pvt. Ltd. v State of Tamil Nadu*,¹⁰ Justice T.S. Sivagnanam observed that “the Migrant Workmen Act was enacted with a view to eliminate the abuses to which the workmen recruited from one state and taken for work to another state were subjected by contractors and others who are recruiting them and the intention of the legislature was to make it applicable to every establishment in which five or more inter-state migrant workmen are employed or were employed and it will also be applied to other contractors who employs or employed five or more Inter-State Migrant Workmen. The statement of objects and reasons of the Act states that the establishment proposing to employ inter-state migrant workmen will be required to be registered under the provisions of the Act.

In *Rajan Kudumbathil v. Union of India*¹¹ while Pronouncing the Judgment Hon’ble Chief Justice S.R. Bannurmath and Hon’ble Justice A.K. Basheer of the Kerala High Court said that we are satisfied that it is the responsibility of a welfare state to ensure that no citizen of this country is denied his right to live in dignity. He is entitled to get basic amenities in life, at least to reasonable levels, whether he belong to the same state or hails from outside the state. If various provisions contained in the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 or the unorganised workers’ social security Act, 2008 would, if implemented, take care of many of the problems that are being faced by some of these migrant workers.

In *Peoples Union for Democratic Rights & Ors. v. Union of India*¹² the court directed that the registration of workers should be quantified in database which shall be made available electronically so as to facilitate the process in case of migrant workers. A centralized government authority may be set up to supervise the entire process and this process to be carried out within three months from now.

In *Tamil Nadu Construction and Unorganised Workers Federation (TCWF) v. Union of India*¹³ the petition was filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Mandamus, directing the respondents 1, 2, 3, 5, 6, and 7 to enforce the provisions of the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979, the Contract Labour (Regulation and Abolition Act 1970 etc, the court made various important order for the protection of migrant workers in this case.

II. CONCLUSION

The migration of workers is very common in India. Conditions under which they are employed are very bad and in many cases the said migration may be called trafficking. Income from Migration is an important source of livelihood for their families. Judiciary in India has played an important role for the protection of migrant workers. Since present laws are not sufficient to stop and regulate migration, hence more laws are required to be enacted to stop and regulate migration, so that Indian judiciary may play more active role.

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