

**RIGHT TO SOCIAL SECURITY OF INTERSTATE MIGRANT
WORKERS WITH SPECIAL REFERENCE TO THE INTERSTATE
MIGRANT CONSTRUCTION WORKERS IN KERALA**

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By

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2019

DECLARATION

I hereby declare that the thesis entitled **“RIGHT TO SOCIAL SECURITY OF INTERSTATE MIGRANT WORKERS WITH SPECIAL REFERENCE TO THE INTERSTATE MIGRANT CONSTRUCTION WORKERS IN KERALA”** is the outcome of the original work done by me under the guidance and supervision of Dr. Sonia K. Das, Assistant Professor, Government Law College, Thrissur. This thesis has not been submitted either in part, or in whole, for any degree, diploma, associateship or any other title or recognition from any university/institution.

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This is to certify that the thesis entitled **“RIGHT TO SOCIAL SECURITY OF INTERSTATE MIGRANT WORKERS WITH SPECIAL REFERENCE TO THE INTERSTATE MIGRANT CONSTRUCTION WORKERS IN KERALA”** is a bonafide record of research carried out by Smt. BHAVANA A. K under my guidance and supervision for the award of the degree of Doctor of Philosophy in Law under The National University of Advanced Legal Studies, Kalamassery, Ernakulam. The work has not been previously submitted to any university, institution or authority for the award of any degree, diploma or honour.

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PREFACE

State of Kerala hosts a substantial migrant work force. The major chunk of construction workers in Kerala belong to internal migrants. The development of communication and transport facilities has accelerated the labour migration to Kerala in an unprecedented way. Interstate labour migration has positive effect on the development of the State. It helps the economy to fill up the labour deficit. Employers get cheap labour. At the same time interstate migrant construction workers are devoid of the benefits of development. The public perception towards interstate migrant construction workers is highly inadequate and negative. Their inalienable basic rights are not protected. The migrant workers do not enjoy decent conditions of work in Kerala. The social security rights of migrant workers are recognized under the human rights documents, Constitution and other labour legislations. The Parliament has enacted a special statute for the protection of interstate migrants namely, Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act (1979). There is a legislation known as Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act (1996) to ensure the social security of construction workers. Despite the legal protections, the interstate migrant construction workers do not receive social security benefits. The researcher makes a humble effort to explore the existing social security rights of migrant workers and the lacunae if any, in the system.

I would like to express my sincere gratitude to all those persons who helped and encouraged me in my study. I am deeply indebted to my guide Dr. SONIA K.DAS for her constant encouragement and supervision in my research. She guided me at every stage of my work and made me comfortable and enthusiastic. I could not have done this work without her support.

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Last, but not the least I offer my sincere prayers and gratitude to the God almighty.

LIST OF ABBREVIATIONS

§	-	Section
AIR	-	All India Reporter
Am.U.Int'l L.Rev.	-	American University International Law Review
Apr.	-	April
Art.	-	Article
Aug.	-	August
CAD	-	Constitutional Assembly Debates
CEDAW	-	Convention on the Elimination of Discrimination Against Women
CMW	-	Committee on the Protection of the Rights of All Migrant Workers and Members of their Families
CRC	-	Convention on the Rights of the Child
CRPD	-	Convention on Persons with Disability
Dec.	-	December
Del.	-	Delhi
DLSA	-	District Legal Services Authority
DR.	-	Doctor
EPW	-	Economic and Political Weekly
ESC	-	European Social Charter
ESIC	-	Employees State Insurance Corporation
ESI Act	-	Employees State Insurance Act

EU Charter	-	European Union Charter
Feb.	-	February
GC	-	General Comment
Govt.	-	Government
Guj.	-	Gujarat
HC	-	High Court
HIR	-	Harward International Review
ICCPR	-	International Covenant on Civil and Political Rights
ICERD	-	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	-	International Covenant on Economic, Social and Cultural Rights
ICMW	-	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
<i>Id.</i>	-	Ibid
IJIR	-	Indian Journal of Industrial Relation
IJLE	-	Indian Journal of Labour Economics
ILM	-	International Legal Materials
ILO	-	International Labour Organisation
ILR	-	Indian Labour Review
IMR	-	International Migration Review
IOM	-	International Organisation of Migration

ISMW Act	-	Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act
IUR	-	International Union Rights
Jan.	-	January
Jul.	-	July
Jun.	-	June
Kar.	-	Karnataka
KELSA	-	Kerala State Legal Services Authority
KHC	-	Kerala High Court
LIC	-	Life Insurance Corporation
LLJ	-	Labour Law Journal
Ltd.	-	Limited
M.P	-	Madhya Pradesh
Mar.	-	March
NALSA	-	National Legal Services Authority
NGO	-	Non Governmental Organisation
No.	-	Number
Nov.	-	November
Oct.	-	October
PUCL	-	Peoples Union For Civil Liberties
PUDR	-	Peoples Union for Democratic Rights
SC	-	Supreme Court
SCC	-	Supreme Court Cases

Sept.	-	September
Supp	-	Supplementary
TLSC	-	Taluk Legal Services Committee
T N	-	Tamil Nadu
UDHR	-	Universal Declaration of Human Rights
UNDP	-	United Nations Development Programme
UNO	-	United Nations Organisation
UN	-	United Nations
UOI	-	Union of India
UP	-	Uthar Pradesh
WHO	-	World Health Organisation
WP	-	Writ Petition

LIST OF CASES

- *Air India Statutory Corporation v United Labour Union*
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CHAPTER - I

INTRODUCTION

*I am that forgiven one
that you need me
when you can't find
any one
as I fulfill your greed
of cheap labour
when I am not required
any more,
then you blame me
that I am a thief
stealing all the jobs
from a mythical breed of workers
that no one has seen,
you treat me like a
pile of garbage
hire me and pay me
dirt cheap,
no human dignity for me
and many like me
you fill your coffers
on the sweat and blood
of me and my brothers
and sisters.....¹*

¹ *Khalid Hameed, Plight of a Migrant Worker (2010).*

Migration of labour is a common phenomenon in the human civilization.² Human beings used to leave their native place in search of better life. Labour migration also contributes to the development of the State.³ Interstate migrant workers are an integral part of the labour force in Kerala. According to the study conducted by Gulati Institute of Finance and Taxation in the year 2013⁴ the migrant labourers are employed in almost all sectors in Kerala like construction, agriculture, hotel and trade .It can be said that the economy of Kerala is managed by migrant workers.⁵ Kerala receives migrants from Nepal and almost all the States of India. The number of domestic migrant labour newly arriving in Kerala for each year is around 2, 35,000.⁶ The majority of the migrant workers are male and 75% of them belong to the age group of 18-29 years.⁷

² The history of labour migration goes back to centuries. One of the earliest forms of migrant labour was slavery .The Africans were captured and transported as slaves to the Caribbean and North America from the sixteenth century onwards. Slavery was considered to be a part of social custom. See Yash Ghai, *Migrant Workers, Markets and the Law*, in GLOBAL HISTORY AND MIGRATION 148-149(Wang Gungwu ed.,1997). See also Rina Ben Mayor & Andor Skotnes, *Some Reflections on Migration and Identity*, in MIGRATION AND IDENTITY 5 (2005).

³ "Migration of labour is an important factor affecting the course of socio-economic development of India." See Paragraph 6 of the Report of Working Group on Migration 3 (2017).

⁴ The study was conducted as per the direction of the then Honorable Minister of Kerala for Labour and Rehabilitation, Sri Shibu Baby John. The major task was to determine broadly the number of domestic migrant labour in the State of Kerala and to find out their social and legal status. The study was conducted on the basis of train surveys as Kerala was the terminal point.

⁵ See M. P. JOSEPH, D.NARAYANA & C.S. VENKATESWARAN, DOMESTIC MIGRANT LABOUR IN KERALA 15-19 (2013).

⁶ The ratio of domestic migrant labour to the local male population in the working age group could be 1:2.5. According to the study ,the population of Kerala in 2011 was 333.88 lakhs and the male population between the age group of 20-64 years is 87.36 lakhs. See *Id.* at 11

⁷ See *Id.* at 12.

Migration is fundamentally a human issue and it has social and economic ramifications.⁸ Migration becomes a contentious issue only when the basic rights are denied to the migrants.⁹ The entire migrant workforce is not vulnerable to exploitation. There are a group of educated and skilled migrants in Kerala who enjoy the benefits of migration. Likewise thousands of educated persons from Kerala migrate to other States with their family and enjoy prosperous life.¹⁰

The majority of unskilled interstate migrant workers in Kerala are employed in the construction sector.¹¹ The unorganized migrant construction workers are the victims of exploitation by the contractors, principal employers and the society as a whole.¹² They are subjected to unfavourable working conditions.¹³ The State of Kerala is pioneer in India to grant social security benefits to construction workers. But the interstate migrant construction workers do not enjoy the social security benefits due to many reasons.

⁸ See Shirly Hune, *Drafting an International Convention on the Protection of the Rights of all Migrant Workers and Families* 19 IMR SPECIAL ISSUE ; CIVIL RIGHTS AND THE SOCIO POLITICAL PATICIPATION OF MIGRANTS , No.4 ,570, 573(Autumn 1985).

⁹ See Laxmidhar Misra, *Migration, Factors, Policies and Programmes*, in MIGRANT LABOUR AND RELATED ISSUES 311 (Vidyut Joshi ed .,1987). See also UNDP, Human Development Report 45 (2015). About 3500 people or more drowned in the Mediterranean Sea when trafficking boats heading towards Europe mainly from Libiya capsized in 2014.

¹⁰ See M.S.A. Rao, *Some Aspects of Sociology of Migration*, 30 SOCIOLOGICAL BULLETIN. , No.1,21, 24-25 (Mar. 1981).

¹¹ According to the Kerala State Planning Board, about 60% of the migrant workers in Kerala are employed in construction sector. Economic Review 168(2016).

¹² The differentiation between formal and informal work is arbitrary. Both sectors are closely connected. See Louise Waite, *Kerala's Informal Labour Market Interventions From Work to Well Being*, 36 EPW, No.26, 2393, 2394 (Jun.30-Jul. 6, 2001).

¹³ See Ministry of Housing and Urban Poverty Alleviation, Paragraph 132 of the Report of The Working Group on Migration 44 (2017). "At work sites, migrants experience long hours, hard work, harsh conditions and injuries (with inadequate medical help or compensation) and social isolation. Even water is scarce and has to be negotiated."

I.1. REASONS FOR LABOUR MIGRATION

There are labour migrants and economic migrants.¹⁴ The population has a tendency to migrate from less secured place to more secured place. The people migrate because they believe that their conditions may be better by migration.¹⁵ The migration will continue so long as there are disparities between regions.

The favourable factors like comparatively high wages, more employment opportunities, good climate, the stability in Government, direct trains to Kerala, increasing use of mobile phones, facility for easy money transfer that attract construction workers to Kerala are called pull factors.¹⁶ There are unfavourable factors in their home States like poverty, low wages, unemployment, low yield in agriculture, natural calamities etc that act as push factors.¹⁷

The poor migrants move between the States for livelihood. Temporary or seasonal migrants come from the poorest strata and lack lands in the native place.¹⁸ For the educated and comparatively rich people migration is a method

¹⁴ The economic migrants move for their economic opportunities and are more self selected than labour migrants. See BARRY.R.CHISWICK, THE ECONOMICS OF IMMIGRATION 129-130(2005).

¹⁵ See PAUL WHITE & ROBERT WOODS, THE GEOGRAPHICAL IMPACT OF MIGRATION 7(1980).

¹⁶ See *supra* note 4 at 26. See also BENOY PETER & VISHNU NARENDRA, GOD'S OWN WORKFORCE, UNRAVELING LABOUR MIGRATION TO KERALA 51,53 (2017).

¹⁷ See K.C.ZAKARIAH, E.T.MATHEW & S.IRUDAYA RAJAN, THE DYNAMICS OF MIGRATION IN KERALA, DIMENSIONS, DIFFERENTIALS AND CONSEQUENCES 146-147 (2003). Unemployment, low wage rates, high population density, demographic factors, lack of necessary rate of economic growth, shortage of capital resources, failure of local institutions and economic institutions to provide necessary support etc also act as push factors.

¹⁸ See Ravi Srivastava & S.K. Sasikumar, *An Over View of Migration in India, Its Impact and Key Issues*, 3-4 (May-8, 2017), <http://www.eldis.org/vfile/upload/1/document/0903/Dhaka-CP-2.Pdf>.

to improve their present position.¹⁹ Male workers migrate for economic reasons while female workers move for social reasons.²⁰

The modern labour migration is the result of economic as well as noneconomic forces. The communication facilities have developed tremendously over the years especially after globalization. Education and influence of mass media increase the process of migration.²¹ Now it is very easy for the workers to find out where they will get good jobs.²² Social values, modern ideas and attraction to city life influence the young generation while taking a decision on migration.²³ The village people from backward classes experience social and economic discrimination. Migration to urban areas would give them more freedom.²⁴

It can be seen that the labour migration of construction workers to Kerala is the result of operation of both push factors in the home States and the pull factors in Kerala.

¹⁹ See Adeline Pelletier, *House Hold Remittances, Inequality and Poverty, Evidence from the State of Kerala*, in DYNAMICS OF INDIAN MIGRATION, HISTORICAL AND CURRENT PERSPECTIVES 406 (S.Irudaya Rajan & Marie Percot ed.,2011).

²⁰ See Anju Kohli & Sadhana Kothari, *The Trend and Dimension of Urban Labour Migration in Western India*, 41 IJLE, No.4, 755,758 (1998).

²¹ See generally Arup Mitra & Mayumi Murayama, *Rural to Urban Migration : A District Level Analysis for India*, IDE Discussion Paper No. 137 (2008) (May10, 2017), <http://www.ide.go.jp/English/Publish/download/Dp/Pdf/137.pdf>.

²² See SUSAN. F. MARTIN, INTERNATIONAL MIGRATION, EVOLVING TRENDS FROM EARLY 20TH CENTURY TO PRESENT 93 (2014).

²³ See Sangita Kumari, *Rural Urban Migration in India; Determinants and Factors*, 3 INTERNATIONAL JOURNAL OF HUMANITIES AND SOCIAL SCIENCES, 178 (Mar. 2014). While making a study on the impact of Mahatma Gandhi National Rural Employment Guarantee Act on labour migration, the author observed that the Act did not make the effect as expected because of the misconception that migration of labour is merely an issue of poverty or merely a product of push and pull of economic forces.

²⁴ See the Report of National Commission on Labour 15(1931).

I.2. CLASSIFICATION OF MIGRANTS.

The migration between different nations is called international migration or cross border migration or out migration. The persons leave the home nation and migrate to a foreign country.²⁵ The international migrants are more vulnerable because they are not the citizens of the country in which they work and reside they require equality and equal protection of law.²⁶ The international labour migrants can be regular or irregular depending on the authorization of stay.²⁷ Those who are residing in foreign countries without proper authorization or who are staying after the expiry of permits are called irregular migrants.²⁸ The most exploited category of migrant workers in international migration is irregular or temporary migrants.²⁹ The developed countries require migrant labour force, but the regular migration channels are not

²⁵ International migration has impact on economic competitiveness, national security, social cohesion and State sovereignty. *See generally* Khalid Koser, *Introduction : International Migration and Global Governance*, 16 GLOBAL GOVERNANCE, No.3, 301, 302-306 (Jul.- Sept. 2010).

²⁶ *See* Nicola Piper, *Economic Migration and the Transnationalization of the Rights of Foreign Workers, A Concept Note*, in GLOBALIZATION AND LABOUR LAWS 95 (Nandini C.P. ed., 2007).

²⁷ *See also* RUHS, TEMPORARY FOREIGN WORKER PROGRAMMES : POLICIES, ADVERSE CONSEQUENCES AND THE NEED TO MAKE THEM WORK, PERSPECTIVES ON LABOUR MIGRATION 77 (2003).

²⁸ Art. 5 of The UN Convention on the Rights of Migrant Workers and the Members of their Families (ICMW) (1990) states that

Migrant workers and members of their families: (a) Are considered as documented or in a regular situation if they are authorized to enter, to stay and to engage in a remunerated activity in the State of employment pursuant to the law of that State and to international agreements to which that State is a party; (b) Are considered as non-documented or in an irregular situation if they do not comply with the conditions provided for in subparagraph (a) of the present article.

²⁹ In order to protect the rights of irregular migrants the host nations must adopt regularization process and temporary guest worker programmes. *See* IAN GOLDIN, GEOFFREY CAMERON & MEERA BALARAJAN ,EXCEPTIONAL PEOPLE, HOW MIGRATION SHAPED OUR WORLD AND WILL DEFINE OUR FUTURE 276 (2011).

adequate to absorb all available workers. It increases irregular migration.³⁰ The irregular migrants are preferred in informal labour market because they perform precarious jobs for low wages which are not done by native workers.³¹ If the migrants are coming from poorest countries the treatment will be more hostile.³² Both the countries namely the sending and receiving country have the duty to protect migrants.³³ The immigration policy shall be comprehensive.³⁴

The “in migration” can be interstate or intrastate. Some persons change their native place and migrate to a different place within their own State known as intrastate migration. The migration between different States is called

³⁰ See Paragraph 1 of the General Comment No.2 of the Committee on Migrant Workers and the Members of their Families, on the Rights of Migrant Workers in an Irregular Situation and Members of their Families, CMW/C/GC/2 dated 28/8/2013.

While the economies of developing countries cannot absorb the large numbers of young men and increasingly women seeking employment, population decline and aging have reduced the labour force in developed countries, thereby generating a demand for low and middle skilled migrant workers in many sectors of economy. However that demand has not been matched by a corresponding increase in regular migration channels. As a result, employers often resort to migrant workers in irregular situations to fill the gaps.

³¹ See *supra* note 27 at 79.

³² See generally W. R. Bohning, *Basic Rights of Temporary Migrant Workers : Law Vs Power*, 8 DEFENCE OF THE ALIEN 99-110 (1985).

³³ Though the States discourage irregular migration in theory, they allow it to secure cheap labour. There is no proper implementation of legal provisions against illegal trafficking of migrants. See Patrick. A. Taran, *The Need for a Rights Based Approach to Migration in the Age of Globalisation*, in MIGRATION AND HUMAN RIGHTS, THE UNITED NATIONS CONVENTION ON MIGRANT WORKERS RIGHTS 157 (Ryszard Cholewinski, Paul De Guchteneire & Antoine Pecoud, ed., 2009).

³⁴ See ILO, INTERNATIONAL LABOUR MIGRATION, RIGHTS BASED APPROACH 164 (2010).

The policy of migration shall address issues like admission of migrants, opportunities for legal migration, regulation of labour market, mobility of migrant workers, recognition of qualification of migrants, protection of employment rights of migrants, irregular migration, feasibility of regularization of migrants, facilities for social cohesion, access to social security, health care, education, housing and migration development linkage in support of home countries.

interstate migration. The interstate migrant workers constitute the substantial workforce in Kerala.³⁵

Migration can be individual oriented or house hold oriented.³⁶ In individual migration the worker is not accompanied by his family. In the household migration, the entire family participates in the process. When the migration of an individual from a family or a community is followed by other members to form a chain, it is known as chain migration.³⁷ In step migration, people move from rural areas to small town in the first instance, and then from small town to larger towns and finally to big cities. The process may take the life of individual or even generations to complete.³⁸

Though there are different types of migrants, the interstate migrant construction workers can be classified on the basis of time factor. The long term migrants migrate for a long period of time. They change their usual place of residence and stay for a long time at the place of employment. There is permanent relocation of workers and families. Certain migrants leave their family and assets at the home State. They change their workplace, but keep their residence. They have an intention to go back and settle their original place. If migrants move for short periods, moving from place to places, they are called seasonal or circular migrants.³⁹

³⁵ See *supra* note 4 at 15-19.

³⁶ See A.S.OBERAI, MIGRATION, URBANISATION AND DEVELOPMENT 26-27(1987).

³⁷ See India Development Report 88 (2015).

³⁸ *Supra* note 36.

³⁹ See Ravi Srivastava, *Internal Migration In India, An Overview of its Features, Trends and Policy Challenges*, in WORKSHOP COMPENDIUM OF INTERNAL MIGRATION IN INDIA – INITIATIVE, NATIONAL WORKSHOP ON INTERNAL MIGRATION AND HUMAN DEVELOPMENT IN INDIA , Vol. II, 4 (6-7 Dec. 2011).

Such migrants are called semi permanent or long term circular migrants.⁴⁰

The seasonal migrants migrate only for a particular season they are making use of the seasonal nature of occupations.⁴¹ The most common type of interstate migrant construction workers in Kerala are temporary migrants. They are also called circular migrants or seasonal migrants. They keep on moving from place to place. They have no intention to settle in Kerala. They return home State periodically and the cycle continues. It is not necessary that they may select the same place again for employment.

1.3. BENEFITS OF LABOUR MIGRATION

Labour Migration is a survival strategy for the working poor. It is a tool for economic betterment for middleclass or upper class . It does not mean that only the worker gets benefits from migration. The society develops through migration. The State of employment always enjoy the positive effects of migration, because the interstate migrant construction worker is a partner in production. He is more hard working than other workers and offers his best to

⁴⁰ Semi permanent or long term circular migrants are usually rural-urban migrants. These migrants enter the labour market through contractors or on their own, or through networks. See Ravi Srivastava, *Internal Migrants and Social Protection in India. The Missing Link, in WORKSHOP COMPENDIUM OF INTERNAL MIGRATION IN INDIA – INITIATIVE, NATIONAL WORKSHOP ON INTERNAL MIGRATION AND HUMAN DEVELOPMENT IN INDIA* ,Vol. II, 171 (6-7 Dec. 2011).

⁴¹ See *supra* note 16 BENOY PETER at 58-59. The interstate migrant workers in Kerala can be broadly classified in to four groups namely the foot loose workers not attached to any employer, the informal employees who are not officially on rolls of employer without any social security benefits, the formal employers with social security benefits who can change the employer and confined labour who are attached to an employer. The migrant construction workers are coming under the category of confined labour. They cannot change their employer and they get the lower wages and conditions.

production. The interstate migrant construction worker contribute to the development of the home State and the State of employment.

The permanent migration is beneficial to the host society and migrants. The migrants themselves can overcome the economic crisis caused by the unemployment in the home region and gain by the experience from the workplace.⁴² The sending regions face brain drain due to the migration of workers.⁴³

The temporary migration is beneficial to the host society, the sending society and the labour migrants. Temporary migration helps the host society to meet the demand of labour. The sending society gets the periodic remittance.⁴⁴

The interstate migrant construction workers in Kerala do contribute to their home State through their remittance, their knowledge and their experience. The migrant construction workers belong to a religion, caste or language usually live together. They disregard small variations of culture or religion which is otherwise relevant for them and form ethnic groups. They recreate their culture of original place at their work place leading to cultural pluralism.⁴⁵ Thus they contribute to the cultural richness in Kerala .A significant proportion of the money earned by the migrant construction workers

⁴² See *supra* note 34 at 24 -29. See also Anita Ghimire & Kabin Maharajan, 4 MIGRATION & DEVELOPMENT, No.1, 90, 107 (2015).

⁴³ See Piyasiri Wikramasekara, *Globalisation, International Labour Migration and the Rights of Migrant Workers*, 29 THIRD WORLD QUARTERLY, No.7, 1247,1255(2008). Migration leads to brain drain. Developed nations require the skilled workers from poor States. It has been described as cherry picking which means attracting the best and brightest talents from the poor countries and depriving them of their investment made in education and human development.

⁴⁴ See 4 Martin Ruhs & Ha-Joon Chang, *The Ethics of Labour Immigration Policy*, in INTERNATIONAL LABOUR MIGRATION 174 (Andrew Geddes ed., 2011).

⁴⁵ See M.S.A Rao, *Some Aspects of Sociology of Migration in India*, in STUDIES IN MIGRATION, INTERNAL AND INTERNATIONAL MIGRATION IN INDIA 20 (1986).

are spent in Kerala itself. They also fill up the vacuum that exist in the informal labour market of Kerala.

1.4. INTERSTATE MIGRANT CONSTRUCTION WORKERS AND THE RIGHT TO DECENT WORK

In the simple sense, work means carrying out some tasks to make a living. But work has a broad meaning than mere subsistence. The content and quality of work is important. Labour is not a commodity in the market.⁴⁶ It has life and aspirations. An interstate migrant construction worker shall enjoy decent work.⁴⁷ Decent work has been recognized as an international developmental goal.⁴⁸

There are four components of decent work namely,

1.4 .1. Work and employment itself

According to the National Commission on Labour, the root cause of social security in India is poverty. It is due to the lack of adequate, productive and remunerative employment opportunities.⁴⁹ Productive employment and decent work are essential for fair globalization. It is a tool for reduction of poverty.⁵⁰ The social, economic and cultural development of the worker is possible only through productive employment. The State shall provide employment opportunities to all those who want to work.

⁴⁶ See art. 1 of the Declaration Concerning the Aims and Purposes of ILO (1944). See also V.R.KRISHNAIYER J., JUSTICE AT CROSS ROADS 165(1999).

⁴⁷ See TONY. J.WATSON, SOCIOLOGY, WORK AND INDUSTRY 111(1980).

⁴⁸ See UN, *Transferring Our World : The 2030 Agenda for Sustainable Development*. Decent work for all is one of the millennium development goal (20Dec.2018), www.sustainabledevelopment.un.org/post2015/transferringourworld/publication.

⁴⁹ See Paragraph 8.444 of the Report of the National Commission on Labour (2002).

⁵⁰ (18 Aug. 2018), <http://www.ilo.org/global/topics/decent-work/lang-en/index.htm>

There shall be freedom to select the job.⁵¹ The remuneration shall be based on factors like working time, work intensity, living income, possibility of development, etc.⁵²

1.4.2. Rights at work

Decent work requires that economic and social development shall be pursued giving primacy to the rights of workers. The work shall enable the sustainable development of the worker and family.⁵³ Rights at work means the core labour standards of ILO namely freedom of association, freedom from discrimination, abolition of child labour and elimination of forced labour.⁵⁴ All the human rights are interconnected and inter dependent.⁵⁵ It is not possible to realize right to work and security without developing the corresponding rights.

⁵¹ The Mahatma Gandhi National Rural Employment Guarantee Act (2005) is a commendable step to ensure employment opportunities to the poor people. The Act guarantee at least 100 days of employment in a financial year to every household whose adult members are ready to do unskilled manual work.

⁵² See Gerry Rodgers, *Decent Work as a Development Objective*, 44 IJLE, No.1, 17, 19-20 (2001).

⁵³ See Richard Anker, Igor Chernyshev, Philippe Egger, Farhad Mehran & Joseph A.Ritter, *Meaning of Decent Work with Statistical Indicators*, 142 ILR, No.2, 151, 152 (2003).

⁵⁴ Art.2 of the ILO Declaration on Fundamental Principles and Rights at Work (1998) declares that

All Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely: (a) freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labour; (c) the effective abolition of child labour; and (d) the elimination of discrimination in respect of employment and occupation.

⁵⁵ See Mac Naughton, Gillian & Diane F. Frey, *Decent Work for All: A Holistic Human Rights Approach*, 26 Am.U.Int'l L.Rev., No.2, 441, 456 (2011).

1.4 .3. Security at work

Security means the social security at work. Right to social security is an inseparable part of decent work.⁵⁶ Decent work respects the fundamental rights of the human person as well as the rights of workers in terms of conditions of work safety and remuneration.⁵⁷

1.4 .4. Representation and social dialogue.

Representation and dialogue means the representation of workers in the organization. There shall be social dialogue among the workers, employers and governments. It is essential to resolve the disputes between workers and employers.⁵⁸

The components of decent work are inter related .Work should build just societies and just persons. Work can be constructive and destructive from the perspective of a worker. Work in the right direction will lead to the development of an individual. Work in dangerous conditions without observing labour standards will destroy the capabilities of a person. If the work is discriminative it leads to stratification and inequalities in societies.⁵⁹ If the basic rights like freedom of association, freedom from discrimination, elimination of forced labour or child labour are not followed, it would not constitute decent work.⁶⁰

⁵⁶ See Dharam Ghai, *Decent Work :Concept and Indicators*, 142 ILR, No.2, 122-123. (2003).

⁵⁷ See Paragraph 7 of the General comment No. 18 of the U.N Committee on Economic, Social and Cultural Rights, on the Right to Work, art.6 of the International Covenant on Economic, Social and Cultural Rights, E/C.12/GC/18 dated 6/2/2006.

⁵⁸ *Supra* note 56.

⁵⁹ See UNDP, Human Development Report 29 (2015).

⁶⁰ See D.Narasimha Reddy, *Challenges of Decent Work in the Globalised World*, 48 IJLE, No.1, 3, 9 (2009).

India has recognized the concept of decent work through various labour legislations.⁶¹ The interstate migrant workers have the right to just and favourable conditions of work. The discrimination of migrant workers leads to the stratification of society. The work without dignity is slavery which is the greatest negation of human right. When they work under exploitative terms the right to decent work is violated. A migrant construction worker cannot enjoy decent work without the basic rights like freedom of choice, freedom from discrimination, freedom of expression, right to religion, right to privacy, freedom of movement, right to education, right to good conditions of work, freedom from forced labour, protection of child hood, old age and so on. The decent work will lead to the holistic development of the migrant construction worker and his family.

1.5. RIGHT TO SOCIAL SECURITY OF INTERSTATE MIGRANT CONSTRUCTION WORKERS

According to World Social Protection Report ,only 27% of the world population enjoy access to comprehensive social security schemes.⁶² The right to social security of the worker is not a new concept.⁶³ The World Labour Report defines social security,

As the protection which society provides for its members through a series of public measures, to offset the absence or substantial reduction

⁶¹ See T.S.Tapola, *Employment in Development ; Connection Between Indian Strategy and ILO Policy Agenda*, 46 EPW, No.10, 62, 66 (Mar. 5-11, 2011).

⁶² ILO, World Social Protection Report 1 (2014-2015).

⁶³ The early vedic hymns which wishes everyone to be happy and free from ill health conveyed the idea of social security. Today it is based on the ideals of human dignity and social justice. See ANIL KUMAR, *LABOUR WELFARE AND SOCIAL SECURITY, AWARENESS IMPLEMENTATION AND UTILITY OF LABOUR LAWS* 7 (2003).

of income from work resulting from various contingencies notably sickness, maternity, employment injury, unemployment, invalidity, old age and death of bread winner, to provide people with health care ,to provide benefits for families and children.⁶⁴

The publication of Beveridge Report (Great Britain) is a land mark in the history of right to social security in the world. The British Government in India appointed Prof.B.P.Adarkar Commission, D.V.Rege Committee and Sir Joseph Bhore Health Survey and Development Committee to study and report the social security measures for India in the year 1943 . The Reports of the Committees and the Constitution of India with the ideals of directive principles of state policy forms the basis of social security laws in India.⁶⁵

The twentieth century is marked by globalization which has increased the interaction among nations, peoples and technology. At the same time it has marginalized the production processes.⁶⁶ Liberalisation and globalization of economies shall be based on the principles of rule of law and

⁶⁴ ILO, World Labour Report, Income Security and Social Protection in a Changing World 29 (2000).

Most people depend upon their work for their livelihood. If they are too sick to work they need to have an alternative or replacement income. This need is widely recognized by social security for employees. The objective of these schemes is not only to provide income security in such circumstances, but also to reduce or eliminate financial pressure on workers to carry on working when sick.

⁶⁵ See India Labour and Employment Report 143 (2014).

⁶⁶ See UNDP, Human Development Report 25 (2015).

Globalisation a dominant force in the 20th century's last decade, is shaping a new era of interaction among nations, economies and people. It is increasing the contacts between people across national boundaries – in economy, in technology, in culture and in governance. But it is also fragmenting production processes, labour markets, political entities and societies. Globalization has positive, innovative, dynamic aspects and has negative, destructive, marginalizing aspects.

See also N.R.Madhava Menon, *Social and Economic Rights, Poverty is Greatest Threat*, in HUMAN RIGHTS 6 (Mathew George Chunakara ed., 2000).

social justice. Otherwise there will be further marginalization of poor.⁶⁷ The globalization influenced the migrant construction workers positively and negatively. Positively it leads to the creation of more employment in the informal sector.⁶⁸ It resulted in the increase of temporary migration.⁶⁹ Negatively it has led to the erosion of labour rights.⁷⁰ The labour markets are interconnected through extreme competition. The advancement in communication has made the international collaboration easy. In order to increase the competitiveness and efficiency in the integrated world economy, labour legislations especially the social security legislations were made flexible. The Government follows an employer friendly approach rather than a labour friendly approach.⁷¹

The social and economic rights of migrant workers are not protected. They always have the fear of being fired from the job. State benefits are made more discretionary in character. The contracting and subcontracting made the

⁶⁷ See Soli.J.Sorabjee, *Rule of Law :Its Ambit and Dimension*, in *RULE OF LAW IN A FREE SOCIETY* 8-9 (Madhava Menon ed.,2008).

⁶⁸ See Lakshmidhar Misra,*Can Globalisation and Labour Rights Coexist*, 44 *IJLE*,No.1, 3, 4(2001).

⁶⁹ See Pooja Singh & Vivek Bhadauria,*Human Rights of Migrant Workforce in the Era of Globalisation*, in *HUMAN RIGHTS IN THE TWENTIETH CENTURY, CHANGING DIMENSIONS* 406 (Gurdip Singh & V.K.Ahuja ed., 2012).

⁷⁰ Labour rights are diluted to reduce the costs. See Osiris Oviedo, *Labour Rights and Human Rights*, 15 *IUR*, No.2, 10, 11(2008). The powerful multinationals provide job opportunities but deny the rights of workers. State protects the interest of powerful multinationals at the cost of poor workers. There shall be equal protection on the rights of migrants and nationals, because there is only one humanity . See also BILL JORDAN & FRANK DUVELL, *MIGRATION, THE BOUNDARIES OF EQUALITY AND JUSTICE* 127-128 (2003). The existing national and international legal landscape is not powerful to control the multinationals. See also WIKTOR OSIATY'NSKI, *HUMAN RIGHTS AND THEIR LIMITS* 43 (2009).

⁷¹ See Partha Pratim Mitra & Agrim Kaushal, *International Labour Standards in India;Some Key Issues*, 41 *IJLE* ,No.4 , 1013,1016 (1998). See also M.K.Pandhe, *Wither Trade Union Rights in India*, 7 *IUR*, No.1,DEBATE ;WTO AFTER SEATTLE, FOCUS ON SOUTH ASIA, 4, 4-5 (2000). Government fear that if any stringent measures are taken, the companies would not invest in their place.

employment more informal. Migrant workers in the informal economy have no upward mobility.⁷² They are engaged in work that are often described as 3D jobs—meaning dangerous, dirty or difficult or a combination of the three.⁷³ They have no stability in income.

Social security measures are necessary for the overall development of a worker. It will protect their dignity as a human person. It has a broad objective than economic improvement of worker. Poverty cannot be seen as mere deprivation of income.⁷⁴ Poverty is to be perceived as deprivation of basic capabilities.⁷⁵ When capabilities are increased, the earning power will also increase.⁷⁶ It will enrich the life of workers. Development is a process of expanding basic freedoms of a migrant worker.

According to ILO⁷⁷, social protection is a human right and a sound economic policy. It contributes to economic growth by supporting house hold income and thus domestic consumption. It enhances human capital and productivity. It is essential for inclusive development and social justice.

⁷² See G. Vijay, *Migration, Vulnerability and Insecurity in New Industrial Labour Market*, 40 EPW, No. 22/23, 2304, 2305 (May 28-Jun. 10, 2005). A study of labour migration in Kothur (Andhra Pradesh) was done. In unorganised sector there are many hindrances in the economic growth of migrants. There will not be any upward mobility in informal economy.

⁷³ See *supra* note 25 at 301, 302-306.

⁷⁴ See AMARTYA SEN, *DEVELOPMENT AS FREEDOM* 92 (2004). “While the connection between income poverty and capability poverty are worth emphasizing, it is also important not to lose sight of basic fact that reduction of income poverty alone cannot possibly be the ultimate motivation of anti poverty policy.”

⁷⁵ *Id.* at 87.

⁷⁶ *Id.* at 92.

⁷⁷ See ILO, *World Social Protection Report 120* (2014-2015).

1.6. RIGHT BASED APPROACH TOWARDS INTER STATE MIGRATION

Migration can serve its purpose as a medium of development only in the context of a right based approach.⁷⁸ Migration can be used as a means to reduce poverty. It cannot be considered as substitute for an employment oriented development strategy.⁷⁹ Every right has a corresponding duty. When the interstate migrant construction worker has the right to decent work and social security, there is a corresponding duty on the part of the employer and State to ensure the same.

The right based approach to migration requires the observance of basic rights of labour. Right to work and right to social security are recognized as human rights. There are plenty of human rights documents drafted at the auspices of UNO and ILO which secure right to social security of workers. There is an international convention for the protection of migrant workers and their family.⁸⁰ The Constitution of India contains provisions for labour welfare and social security. The seventh schedule of the Constitution provides for the distribution of legislative powers between the Centre and States.⁸¹ Interstate migration is a union subject included in List I.⁸² Public health is included in

⁷⁸ See Inter Parliamentary Union, ILO and UN Office of the High Commissioner for Human Rights, *Migration, Human Rights and Governance*, HANDBOOK FOR PARLIAMENTARIANS NO.24, 166 (2015) (Aug. 14, 2015), Migration % 20 human % 20 rights % 20 and % 20 governance, hand % 20 boo % 20 of % 20 parliamentarians % 20 published % 20 by pdf.

⁷⁹ See W.R.Bohning, *The ILO and Contemporary International Economic Migration*, 10 IMR, No.2, 152, 147-156 (Summer 1976).

⁸⁰ See S.R.BANSALI, LAW RELATING TO HUMAN RIGHTS IN INTERNATIONAL AND NATIONAL LAWS AND CONSTITUTION 980-986(2013).

⁸¹ See art. 246 of the Constitution of India.

⁸² Entry 81 includes interstate migration and interstate quarantine.

List II.⁸³ Concurrent list contain subjects like vagrancy, nomadic and migratory tribes,⁸⁴ economic and social planning,⁸⁵ social security and social insurance, employment and unemployment,⁸⁶ welfare of labour including conditions of work, provident funds, employers liability, workmen's compensation, invalidity and old age pensions and maternity benefits.⁸⁷ The Parliament has enacted a plethora of welfare legislations for the social security of workers. But certain labour welfare legislations do not apply to migrant construction workers due to their casual nature of work. The statutes like Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act (1979), The Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act (1996), The Contract Labour (Regulation and Abolition) Act (1970), The Bonded Labour System Abolition Act (1976) and The Unorganised Workers Social security Act (2008) are directly applicable to them.

The cost of migration is huge and not affordable for interstate migrant construction workers. Neither the State nor the employer subsidize the cost of migration.⁸⁸ The State shall facilitate interstate labour migration. The nature of migration has undergone changes over the years like the declining of life time migration, employment of migrants in the informal sector, rural to rural

⁸³ Entry 6 of State list.

⁸⁴ Entry 15 of concurrent list.

⁸⁵ Entry 20 of concurrent list.

⁸⁶ Entry 23 of concurrent list.

⁸⁷ Entry 24 of concurrent list.

⁸⁸ There are no investments in basic needs and infrastructure of migrants. *See generally* Ravi Srivastava, *Labour Migration, Inequality and Development Dynamics in India. An Introduction*, 54 IJLE SPECIAL ISSUE ON LABOUR MIGRATION AND DEVELOPMENT DYNAMICS IN INDIA, No.3, 382-384 (Jul.–Sept. 2011).

migration for work from poor States to agriculturally better States and short term seasonal migration.⁸⁹ Government policies on migration are criticized on the ground that it considers migration from the perspective of urban development and neglect lives of migrant workers.⁹⁰ If there is no proper infrastructure to implement the rights, mere promulgation of right to social security is meaningless. Weak and corrupt administrative system cannot realize right based approach.⁹¹ In *People's Union for Democratic Rights and Others v Union of India & Others*⁹², the Supreme Court lamented on the negligence of the Government in implementing the provisions of beneficent legislation like Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act (1979).

The migrants who are deprived of their rights cannot enjoy the benefits of migration. It will compromise their ability to contribute to the development of nation. They cannot lead a productive life economically, culturally and socially. There shall be social and economic empowerment of the migrant

⁸⁹ India Labour & Employment Report, Workers in the Era of Globalization 36 (2014).

⁹⁰ See Sandeep Chachra, *Government Policies and Rural Urban Migration*, 23 INDIAN ANTHROPOLOGIST, No.1, 80 (Jun. 1993). The role of migration in helping the regional convergence of nation is not considered in policies.

⁹¹ See Pranab Bardhan, *Challenges for a Minimum Social Democracy in India*, 46 EPW, No.10, 39, 40 (Mar. 5-11, 2011).

⁹² *AIR 1982 SC 1473 (India)*. It is popularly known as the Asiad Workers case. The petitioner is an organization formed for the purpose of protecting democratic rights. It commissioned three social scientists for the purpose of investigating and inquiring into the conditions of migrant workmen engaged in the various Asiad projects. Based on the report made by these three social scientists after personal investigation and study, the petitioner addressed a letter to Bhagwati J., Complaining of violation of various labour laws by the respondents or their agents and seeking interference by the Supreme Court to render social justice by means of appropriate directions to the affected workmen. The Supreme Court treated the letter as a writ petition.

construction workers. The interstate migrant construction workers shall get the rights promised under human rights documents, Constitution and other statutes.

1.7. RIGHT VIOLATIONS FACED BY THE MIGRANT CONSTRUCTION WORKERS IN KERALA

Migrant workers suffer gross violation of their human rights and Constitutional rights. Though the welfare statutes do not exempt interstate migrant construction workers from its ambit, the workers do not get the benefit of all welfare legislations due to their informal nature of work. The migrants are heterogeneous groups and their problems are different. The migrant workforce has no power to assert their rights. They have no influence on the legal system.⁹³

1.7.1. Discrimination

The migrant construction workers are subjected to discrimination in social and economic life. They are discriminated on the basis of migrant status, sex, method of recruitment, casual nature of employment, undeclared work, lack of association and xenophobia⁹⁴. The labour markets are stratified and segmented by the differential treatment accorded to migrants. They are always placed in the lowest category.⁹⁵ The migrant construction workers are not treated as equals with the construction workers of Kerala.

⁹³ They are described as chaff in the wind. See Vasudha Dhagamwar, *Migrant Labour and the Law*, in *MIGRANT LABOUR AND RELATED ISSUES* 214 (Vidyut Joshi ed.,1987).

⁹⁴ See *supra* note 27 at 72-76.

⁹⁵ See *supra* note 34 at 81.

The concentration of large number of poor migrants in unhygienic conditions lead to the creation of slums leading to various health issues for local people.⁹⁶ It creates a feeling of hatred towards migrant population.

1.7.2. Payment of less wages

Economic security is an aspect of social protection of migrant construction workers.⁹⁷ Wages are essential determinants of economic security.⁹⁸ The interstate migrant construction workers are not paid better wages compared to other workers of Kerala. They are not fully paid. Their wages are with held. No over time allowances are given. The contractors deduct huge commission from the wages. The employers are at a greater advantage to exploit the workers because the migrants are vulnerable due to their poverty, migrant status and ignorance.

1.7. 3. Lack of social security

State and society exists to secure a noble and dignified life of its citizens. Social security legislations are enacted to secure their economic minimum.⁹⁹ Social security assures the dignity and productivity of a worker. The interstate migrant construction workers are deprived of the right to social security. The unorganized nature of work prevents the migrants from claiming social security benefits. It is very difficult to identify an employer for seasonal

⁹⁶ See Pratibha Asudani, *Socio Cultural Implications of Migration*, in HUMAN MIGRATION IN THE INDIAN SUB CONTINENT, COMPLEXITIES, CHALLENGES AND IMPLICATIONS 136-137 (Vinod. K. Bharadwaj, & Nisha Yadav ed., 2013).

⁹⁷ Unlike the organized sector, where there is steady and regular employment, unorganized workers need employment security, income security and social security simultaneously. See Paragraph 7.44 of Report of the National Commission on Labour 138-139(2002).

⁹⁸ See Renana Jhabwala, *Social Security for Unorganized Workers* , 33 EPW, No.22, L7, L8 (May 30-Jun. 5 , 1998). Economic security is the means of increasing social security.

⁹⁹ See JULIUS STONE, SOCIAL DIMENSIONS OF LAW AND JUSTICE 356(1999).

worker.¹⁰⁰ The absence of a formal employer employee relationship acts as an obstacle for registration in social security schemes. Majority of the welfare schemes require contribution from employers. Since they keep on moving from workplace to workplace, documentation is not easy. The lack of portability of social security benefits makes their condition more adverse.¹⁰¹ The seasonal migrant workers in Kerala do not get the benefit of food subsidies that are made available through the ration cards due to the frequent changes in residence.¹⁰² In case of contingencies like sickness, invalidity, old age, motherhood, death or accidents the workers do not get any social protection.

1.7. 4. Social exclusion

The interstate migrant construction workers are purposefully kept away from the mainstream of the society in Kerala. They have to face alienation from their home culture, discrimination at workplace and xenophobia.¹⁰³ Whenever any crime is reported, the media and the public suspect the migrant workers.¹⁰⁴

The interstate migrant workers are excluded from the host society in various ways. Exclusion is denial or deprivation. They are suffering

¹⁰⁰ See S.Mohanan Pillai, *Social Security For Workers in the Unorganised Sector ; Experience of Kerala*, 31 EPW, No.37, 2098, 2099(Aug.3,1996).

¹⁰¹ See Paragraph 75 of the Report of Working Group on Migration 29 (2017).

While the right to freedom of movement is constitutionally protected, the same is not true of access to entitlements including entitlements under the National Food Security Act (2013) through the Public Distribution System (PDS); voting rights in local, state and national elections; caste certificates and other markers of vulnerability; or even access to Government schemes such as the National Rural Health Mission. A key issue inhibiting the movement of labour is that migrants who are registered to claim access to a number of legal and other entitlements at their source locations, lose access to these benefits upon migrating to a different location.

¹⁰² See *supra* note 39 at 178.

¹⁰³ See ANDRES SOLIMANO, *INTERNATIONAL MIGRATION IN THE AGE OF CRISIS AND GLOBALISATION, HISTORICAL AND RECENT EXPERIENCE* 38 (2010). Xenophobia, or the fear of outsiders is a psychological problem faced by the local people.

¹⁰⁴ See *supra* note 29 at 278 – 280.

economical, social and political exclusion.¹⁰⁵ The unskilled migrants have no assets of their own. They are selling their labour at very low wages. Migration is distress migration for earning their livelihood. It is economic exclusion. They are victims of social exclusion since they cannot lead a dignified life. They have no opportunity to participate in the decision making process that affect their life. It is political exclusion. They are always treated as an alien population and viewed with suspicion.¹⁰⁶ The local people believe that the large population of migrants will destroy their traditional culture and identity.

When migrants fill the jobs that are left by local workers as degrading or less prestigious, there is no conflict.¹⁰⁷ When local workers experience labour shortage due to the presence of migrants, tension starts. When migrants are ready to work for low wages, it will also restrict the legitimate claim of local workers.¹⁰⁸ It increases the tension between migrants and local population.

1.7. 5. Inadequate health care

The interstate migrant construction workers are the victims of ill health, occupational diseases and epidemics. Their bad health is the result of their bad living conditions and poor nutrition. They have to accommodate the changes in their food habits, medical treatment and climate.¹⁰⁹ Language is a barrier to the

¹⁰⁵ See JAN BREMAN, *OUT CAST LABOUR IN ASIA* 287-288 (2010).

¹⁰⁶ See *the Report of the Global Commission on International Migration*, 31 *POPULATION AND DEVELOPMENT REVIEW*, 787, 791 (Dec.2005). The involvement of foreigners in many incidences of violence in different parts of the world creates a suspicion on the mind of the society even towards the genuine workers.

¹⁰⁷ See *supra* note 45 at 22-23.

¹⁰⁸ Since the migrants are available for work at cheap rate, the employers will replace the local workers by the migrants. It will reduce the wages and conditions of work of the entire workforce. The atmosphere will generate a feeling of hostility among the workers. There will not be any social cohesion in the society. See *supra* note 34 at 72,179.

¹⁰⁹ See *the Report of the Royal Commission on Labour* 17 (1931).

effective health care. Workers cannot explain their symptoms in a language that is not known to them. The majority of the interstate migrant construction workers are illiterate and they cannot read the safety instructions affixed in their workplace. That increases the chances of accidents and occupational diseases.¹¹⁰

1.7. 6. Separation from family

The migrants are forced to leave their birthplace and family due to financial constraints. They cannot afford the cost of bringing and maintaining their family in Kerala. They have to work and live in a place which is completely different and unfamiliar to them. Many of them have to lead a life that is miserable and pitiable than they have at their original place.¹¹¹ Lack of security in social life, absence of care and support from family, the unhygienic living conditions etc lead to depression of workers. They find relief on alcohol or other drugs. Majority of the migrants leave their place in their reproductive age. The chances for contracting sexual diseases are high among migrants who live single and indulge in unprotected sex.¹¹² In a way it promotes prostitution.

¹¹⁰ See HAROLD DUNNING, *TRADE UNION AND MIGRANT WORKERS* 10 (1985). See also Smitha Pillai, *Political Exclusion of Domestic Migrant Labourers in Kerala*, 2 *JOURNAL OF SOCIAL DISCOURSE*, No.2, 120,126. (Apr.2015–Sept. 2015).

¹¹¹ See Renana Jhabwala, *Migrant Workers and Non-governmental Organisations*, in *MIGRANT LABOUR AND RELATED ISSUES* 265 (Vidyut Joshi ed.,1987).

¹¹² See Shiva.S.Halli, James Blanchard, Dayanand.G.Satihah & Stephen Moses, *Migration and HIV Transmission in Rural South India ; An Ethnographic Study*, 9 *CULTURE, HEALTH AND SEXUALITY*, No. 4, 85, 86 (Jan.-Feb. 2007). Changes in sexual behaviour, lack of sexual education, insufficient health care etc are some of the factors that make them more vulnerable to the sexual diseases. See also Ivan Wolffers, Irene Fernandez, Sharuna Verghis & Martijn Vink, *Sexual Behaviour and Vulnerability of Migrant Workers for HIV Infection*, 49 *CULTURE, HEALTH AND SEXUALITY*, No.4, 459,461 (Oct.-Dec. 2002).

1.7. 7. Lack of collective bargaining

The migrant construction workers of Kerala are not well organized as the resident workers. Social dialogue enables the worker to negotiate on their rights.¹¹³ The State cannot deny or restrict this right to a migrant worker on any ground.¹¹⁴ There are many hostile factors like economic dependence of workers on employers, coercive power of the feudal class, lack of proper implementation of laws that disallow the organization of informal workers. The privileged sections of the society never encourage empowerment of poor workers.¹¹⁵ Political parties of State of employment do not take care of the migrants because they have no voting rights.

1.7.8. Poor living conditions

There shall be reasonable accommodation to migrant workers. They cannot afford the rate of rents. Sometimes they are forced to live in streets or pavements without any security.¹¹⁶ The contractors and the employers are grossly negligent in providing good accommodation to the workers. Lack of proper housing prevents them from getting residential proofs which are necessary to access social security rights.¹¹⁷ They are living in abysmal

¹¹³ See DHARAM GHAI, DECENT WORK, OBJECTIVES AND STRATEGIES 22(2006).

¹¹⁴ Inter Parliamentary Union, ILO and UN office of the High Commissioner for Human Rights, *Migration, Human Rights and Governance*, HANDBOOK FOR PARLIAMENTARIANS, No.24,102 (2015) (Jan.3,2018), Migration % 20 human % 20 rights % 20 and % 20 governance, hand % 20 boo % 20 of % 20 parliamentarians % 20 published % 20 by pdf.

¹¹⁵ See L.Misra, *Organising the Unorganised Labour : Myth, Reality and Possibility*, 41 IJLE, No.1, 53, 64 (1998).

¹¹⁶ *Supra* note 112 HAROLD DUNNING at 8.

¹¹⁷ See Ram B. Bhagat, *Migrant's (Denied) Right to the City*, in WORKSHOP COMPENDIUM OF INTERNAL MIGRATION IN INDIA – INITIATIVE , NATIONAL WORKSHOP ON INTERNAL MIGRATION AND HUMAN DEVELOPMENT IN INDIA, Vol. II , 95 (6-7 Dec. 2011).

conditions in tents made of plastic sheets, plywood or asbestos sheets.¹¹⁸ There are no proper sanitation facilities. The unhygienic living conditions of workers cause serious health issues not only to the workers but also to the public. In *Jose M.A v Vadavukodu Puthencruz Grama Panchayath and Others*,¹¹⁹. K. Vinod Chandran J., took serious concern of the poor living conditions of interstate migrant workers and observed that

“It is a social malady that is now affecting the State of Kerala. Often what come to the public eye are the crimes in which such migrant labourers are involved. The exodus of such labourers in to the state cannot be washed away.”¹²⁰

1.7.9. Exploitation of women and children

In earlier days, female migration considerably depends upon male migration. There are also other factors like government policy, industrial development, education, economic conditions, transport facility etc that control female migration.¹²¹ Now women migrate independent of men as workers.¹²²

¹¹⁸ See NCEUS, Paragraph 6.27 of the Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector, 98(2007).

Migrant workers not only face adverse working conditions, their living conditions are also often deplorable. With little or no assets of their own, the migrant wage workers often live in temporary hutment located at the site of work, such as in case of construction industry. There is no facility of safe drinking water or hygienic sanitation. Often they live on pavements or in slums, stations and parks in the cities. In the case of temporary migration, the migrants are not able to make use of the public distribution system due to non-availability of ration cards.

¹¹⁹ 2016 (3) KHC 498 (India).

¹²⁰ 2016 (3) KHC 498, 505 (India) at Paragraph 15 . The High Court observed that while highlighting the criminal acts of such migrant labourers, it shall be noticed that the persons who bring them into the State treat them dismally and house them in inhuman conditions.

¹²¹ See B.H.Joshi, *Migration Pattern in India*, in ISSUES IN INDIAN ECONOMY 263-265 (K.R. Gupta ed., 2002).

¹²² See Don Flynn&Elenore Kofman, *Women, Trade and Migration*, 12 GENDER AND DEVELOPMENT, No.2, 66, 67(Jul.2004).

The women migrants and child migrants face serious exploitation like trafficking and sexual abuses.¹²³ Both males and females migrate, but the nature of jobs and problems are different. Migration policy shall address gender specific issues.¹²⁴

The women in the formal sector do enjoy many social security benefits and better working conditions. Majority of the women migrant workers are unorganised and social security rights are denied to them.¹²⁵ The unorganized women migrant construction workers are employed at the bottom level in the low skilled jobs. They are always concentrated on the gender specific areas.¹²⁶ The nature of the work that is done by woman migrant constitute one of the major reasons for the discrimination.¹²⁷

Cost of migration for women is very high. The costs are not only economical but also psychological. They may suffer sexual abuse including rape, social and cultural disintegration and loss of parenting care for their

¹²³ See Rajiv Khandelwal, *Creative Practices and Policies for Better Inclusion of Migrant Workers, The Experience of Aajeevika Bureau*, in WORKSHOP COMPENDIUM OF INTERNAL MIGRATION IN INDIA – INITIATIVE, NATIONAL WORKSHOP ON INTERNAL MIGRATION AND HUMAN DEVELOPMENT IN INDIA , Vol. II, 199 (6-7 Dec. 2011).

¹²⁴ See Paragraph 5 of the General Comment No.26 of the Committee on Convention on Elimination of Discrimination Against Women , on Women Migrant Workers , UN doc. CEDAW/C/2009/WP1/R dated 5/12/2008.

¹²⁵ See Paragraph 9.141 of the Report of the National Commission on Labour (2002).

Over 95% of women workers are in the unorganized sector. These workers are vulnerable because their work is insecure, irregular and often unrecognized. They have to balance the work they have to do with their responsibilities for children and home. Since their income is not commensurate with their work, they do not own any assets and so do not have access to social security.

¹²⁶ See Jeemol Unni & Uma Rani, *Social Protection for Informal Workers*, 44 IJLE, No.4, 559, 565. (2001). See also Paragraph 7.49 of the Report of the Second National Commission on Labour (2002). The gender specific employments like domestic work make them more vulnerable.

¹²⁷ See Rashmi Sharma, *Gender and International Migration : The Profile of Female Migrants from India* ,39 SOCIAL SCIENTIST, No.3/4, 37, 40-41 (Mar.-Apr. 2011).

children.¹²⁸ The migrant women construction workers face discrimination and subordination at their work place.

The migrant children suffer various traumas due to the migration of their parents. If they are left behind by the parents they have to face the lack of care and isolation. If they are accompanying their parents they suffer the pre departure problems and the problems of lack of social integration.¹²⁹ Certain children migrate independently of their parents. But their decision to migrate is the result of economic constraints of their family.¹³⁰ The migrant children do not get proper education and nutrition.

1.7.10. Unorganised nature of work

The workers who do not enjoy the social security rights are broadly classified as unorganized workers.¹³¹ The migrant workers in the organized

¹²⁸ See Kim Van Eyck, *Women Workers and Migrants in the Globalised Public Health Sector: Debate at the 2004 International Labour Conference*, 15 DEVELOPMENT IN PRACTICE, No.5, 701, 706 (Aug.2005).

¹²⁹ See Jorge Bustamante, *Paragraphs 18, 19, 22 & 23 of the Report of Special Rapporteur on Human Rights of Migrants*, Human Rights Council, 11th Session, UN Document.A/HRC/11/7 (15 Jun. 2018), www.refworld.org/docid/47d647462.html. See also BRIAN KEELEY, INTERNATIONAL MIGRATION, THE HUMAN FACE OF GLOBALISATION 89 (2010). The educational background of migrant parents affect the children also.

¹³⁰ See Ann Whitehead, *Children's Agency, Autonomy of Migration*, in WORKSHOP COMPENDIUM OF INTERNAL MIGRATION IN INDIA – INITIATIVE, NATIONAL WORKSHOP ON INTERNAL MIGRATION AND HUMAN DEVELOPMENT IN INDIA, Vol. II , 121 (6-7 Dec.2011).

¹³¹ “Unorganised workers consist of those working in the unorganised enterprises or households, excluding regular workers with social security benefits and the workers in the formal sector without any employment/ social security benefits provided by the employers.” See NCEUS, Paragraph 1.14 of the Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector 3 (2007). See also paragraphs 7.24 & 7.25 of the Report of the National Commission on Labour (2002). “In the organized sector too, permanent workers are getting casualised and contractualised as a consequence of new economic and industrial policies. All workers who are not covered under the social security laws can be considered as part of the unorganized sector.”

sector are better than those in the unorganized sector.¹³² The migrant seasonal workers like construction workers are unorganized and are devoid of social protection.¹³³ According to the National Commission for Enterprises in the Unorganised Sector,

“Migrants contribute to growth by providing cheap and flexible labour, yet they remain without an identity and are unable to get access to Government programmes and schemes related to health and education meant for the poor”.¹³⁴

The casual nature of employment and the absence of a permanent formal employer employee relation are the major obstacles for migrant construction workers to get social protection.¹³⁵

1.8. SIGNIFICANCE OF THE STUDY

Though the migrant workforce is entitled to the protection of national as well as international right regime, they are subjected to various types of abuses in their daily life.¹³⁶ They face discrimination, unequal wages, social insecurity, social exclusion, poor health care, separation from family, lack of collective bargaining, poor living condition, abuse of women hood and child hood. The

¹³² See NCEUS, Paragraph 6.13 of the Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector 96 (2007).

¹³³ See Paragraph 47 (d) of General Comment No. 23 of Committee on Economic, Social and Cultural rights , on the Right to Just and Favourable Conditions of Work (art. 7 of ICESCR), E/C.12/GC 23 dated 27/4/ 2016. The informal workers are often excluded from national statistics and legal protection support and safeguards.

¹³⁴ See NCEUS , Paragraph 11.60 of The Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector (2007).

¹³⁵ See Daniel Blackburn & Achuthan N. Navamukundan, *Seeking Security in an Unsecure World*, 7 IUR STRUGGLING FOR A SOCIAL WAGE ; FOCUS ON SOCIAL SECURITY, No.4, 12,13 (2000).

¹³⁶ See generally JAN BREMAN, OF PEASANTS, MIGRANTS AND PAUPERS 250-251(1985). Jan Breman in his research in South Gujarat on the plight of interstate migrant laborers had observed that the workers had no idea about their work, duration of the work and the wages. They were often forced to leave the work place, without collecting the balance wages from the employer due to adverse working conditions.

employment in construction sector is precarious and risky. The migrants have no security on their employment and income. Social justice requires that they shall be protected by the State on their misfortunes. The study on social security of interstate migrant construction workers assumes significance in the context of right violations faced by the unorganized interstate migrants. There are certain loopholes in the existing social security measures for migrant workers. They need special attention because of their migrant status and vulnerability. There are serious flaws in the implementation of existing measures also.

1.9. OBJECTIVES OF THE STUDY

The major objectives of the study can be summarized as follows;

- To analyse the reasons for migration of construction labourers to Kerala.
- To study the problems faced by interstate migrant construction workers in Kerala.
- To understand the living and working conditions of interstate migrant construction workers in Kerala.
- To scrutinize the legal provisions to protect the social security rights of interstate migrant construction workers in Kerala.
- To evaluate the executive measures to protect the social security of interstate migrant construction workers in Kerala.
- To find out the lacunae in legal provisions, if any.
- To address the challenges faced in realizing the right to social security of migrant construction workers in Kerala.

1.10. HYPOTHESIS

On the basis of the objectives of the study, the following hypothesis was formed. The interstate migrant construction workers do not enjoy the social security rights offered by the human rights documents, Constitution, welfare legislations and administrative measures. The existing law is not comprehensive enough to protect their social security rights. There is great gap in the implementation of measures.

1.11. FORMULATION OF RESEARCH QUESTIONS

Based on the objectives of the study, certain research questions are formulated as follows;

- If there is any infringement of the human right to social security of interstate migrant construction workers that are recognized under various international documents ?
- Do the interstate migrant construction workers enjoy the social security rights offered by the Constitution ?
- Whether the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act (1979) contain sufficient provisions for the social security of interstate migrants ?
- Whether the provisions of the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act (1979) are properly implemented ?
- What are the amendments required in the ISMW Act 1979 ?

- How far the migrant construction workers do enjoy the social protection offered under The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act 1996 ?
- Do they enjoy the social protection envisaged under general labour laws ?
- Are they enjoying the social security measures administered through various Government schemes ?
- Do the contractors and principal employers follow the obligations imposed under various labour laws ?

1.12. METHODOLOGY OF STUDY

The methodology adopted for the study is a combination of doctrinal and non doctrinal research. An empirical study was conducted among interstate migrant workers employed in the construction sector in the district of Ernakulam. The study was made with the help of a questionnaire. About 200 respondents were selected out of whom 50 were female workers.

1.13. SCOPE AND LIMITATIONS OF THE STUDY

The universe of study is the interstate migrant workers employed in the construction sector. The rights of migrant workers were studied with special reference to right to social security. The study analyses the jurisprudence of migration, social security, the international conventions and national laws dealing with social security of migrant workers, the administrative measures for welfare migrants etc.

The research is not entirely based on the data derived from the field study. The field study is conducted to test the findings of doctrinal study. The empirical study has some limitations. The empirical study is limited to the district of Ernakulam. The district was selected for study, because it is the most prominent place for migrants and construction business. The sample consists of 150 male workers and 50 female workers employed in the construction sector in different capacities. The number was limited to 200 because the migrants keep on moving from place to place and they exhibit similar characteristics. There are no accurate official data as to the number of migrants because of their mobile nature. Thousands of migrants workers are employed in different parts of Kerala and they change their workplace frequently. The data collected was not tested by using statistical method.

The secondary data includes the study of human rights documents, general comments, Constitution, Constitutional Assembly Debates, Report of National Commissions on Labour, Government reports, Government orders, Government data, committee reports, case laws, statutes, Rules, text books, articles, journals, websites, etc.

1.14. CHAPTER BREAK UP

The thesis consists of ten chapters. The first chapter gives an introduction to the entire work. Second chapter deals with the theoretical foundation of migration, labour welfare and social security. Third chapter explains the human right perspectives of social security of migrant workers. Fourth chapter analyses the Constitutional foundation of right to social security

of interstate migrant construction workers. Fifth chapter analyses the provisions for social security of interstate migrant construction workers under the Inter State Migrant Workmen(Regulation of Employment and Conditions of Service) Act 1979. Sixth chapter explain the social security of interstate migrant construction workers under the Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act 1996. Seventh Chapter analyses the general labour legislations that guarantee social security to workers and its applicability to migrant workers. Next chapter deals with various welfare measures administered by the Government for interstate migrant workers. Ninth chapter discusses the empirical study conducted among migrant workers in the construction sector. Last chapter summarizes the study and also includes suggestions.

CHAPTER II

LABOUR MIGRATION, LABOUR WELFARE AND SOCIAL SECURITY; A CONCEPTUAL ANALYSIS

The study of social security of inter migrant construction workers requires sound understanding of the theoretical foundation of migration and social security. The standards of labour welfare depends on factors like time, region, nature of industry, custom, political system, social and economic development etc. But there are certain basic principles of labour welfare in every society. The ultimate objective of labour migration is the welfare of workers and their family. All social security measures are directed to secure the welfare of labour. Social security of workers is a component of labour welfare. The labour migration shall lead to labour welfare and social security. This chapter makes a conceptual analysis of migration of labour, labour welfare and social security.

2.1. THEORIES OF MIGRATION

India is a land of diversities. There are differences in social and economic conditions between different States in India as well as between different parts of the same State. It is not possible to arrive at a single phenomenon that leads to interstate migration in a vast country like India.¹

¹ There are many factors like geography, topography and demography of a particular area, differences in natural resources, development of the place, utilization of human resource, livelihood and lifestyle of the people, the extent to which labour is surplus or deficit to the actual requirement, traditional skills of the workers, the natural urge to migrate, influences of contractors etc that causes labour migration. See Laxmidhar Misra , *Migration, Factors, Policies and Programmes*, in *MIGRANT LABOUR AND RELATED ISSUES* 319 (Vidyut Joshi, ed., 1987).

There are various theories that explain migration of labour like Neo Classical Economics Theory, Dual Labour Market Theory, New Economics of Migration, World System Theory, Net Work Theory, Theory of Cumulative Causation and Institutional Theory.

Neo Classical Economics Theory, Dual Labour Market Theory, New Economics of Migration and World System Theory deal with reasons for starting migration. Net Work Theory, Theory of Cumulative Causation and Institutional Theory explain why migration process perpetuates. The postulates of these theories apply equally to interstate migration. Migration being an interdisciplinary subject has various versions on economical and sociological contexts.²

2.1.1. Ravenstein laws on migration and interstate migration

The analysis of the theories of migration will be incomplete without knowing the principles formulated by the Ravenstein, because he is the pioneer in the study of theories of migration. Ravenstein established a theory of migration in the year 1880 that forms the basis for the study of migration. The major principles formulated by Ravenstein are the followings.

- Most migrants proceed only for a short distance.
- The people who are living close to the rapidly growing town migrate to the town first. The migrants from distant area fill the gaps they left.
- There is a process of dispersion which is in the direction opposite to the absorption.

²See generally S.N.TRIPATHY & C.R.DASH, MIGRANT LABOUR IN INDIA 55-62 (1997).

- Each migration flow produces a return flow.
- Long distant migrant usually go to the great centers of commerce and industry.
- Persons from rural area have the tendency to migrate more than natives of town.
- Women migrate more than men within the country of their birth.
- Economic factors are the reasons for migration.
- Families are less likely to make international moves than young adults.
- Large towns grow by migration than by natural growth of population.
- Migration proceeds step by step.
- The major direction of migration is from rural areas to the centers of industry and commerce.³

The principles formulated by Ravenstein are applicable to interstate migration also. The major reason for migration of construction workers to Kerala is their economic compulsion. The persons from rural area shows the tendency to migrate because of the under development of their region. They migrate to industrialized areas for better employment. Labour mobility and job opportunities are more in urban areas due to industrialization. Due to the development of transport and communication facilities, the labour migrants now move for long distances. Since Kerala is a terminal point, thousands of construction workers from faraway places migrate to Kerala.

³ See V.N.P. SINHA & M. D. ATAULLAH, *MIGRATION, AN INTERDISCIPLINARY APPROACH* 26-27 (1987).

2.1.2. Neoclassical Economics – Macro Theory and interstate migration

It is one of the oldest theories of migration. The international labour migration is the result of the differences in wage rates between countries. The theory lays down that there is an imbalance between the demand and supply of labour.⁴ Certain countries are rich in labor, but relatively poor in capital. Certain other countries have poor labour but relatively rich capital. Such countries have high wages.⁵

The workers from low wage countries migrate to countries having higher wages.⁶ It is believed that unemployment, poverty and over population will be reduced by migration. Remittances encourage poor countries to send more and more migrants.⁷

Neoclassical Economics Macro Theory explains migration on the wage differences between countries. It is true in interstate migration also. Kerala is a hub of internal migrants from different parts of India. The construction workers from other States migrate to Kerala because of the comparatively higher wages prevailing here.

⁴ See 1 Douglas.S.Massey, Joaquin Arango, Graeme Hugo, Ali Kouaouci, Adela Pellegrino & J.Edward Taylor, *Theories of International Migration, A Review and Appraisal*, in INTERNATIONAL MIGRATION 3-4 (Andrew Geddes ed., 2011).

⁵ See Lucia Kurekova, *Theories of Migration : Conceptual Review and Empirical Testing in the Context of EU East-West Flows* 5 (Jun.5, 2017), <http://cream.conference-services.net/resources/952/2371/pdf/mecsc2011-0139-paper-pdf>. See also DILIP SAIKIA, VACHASPATI SUKLA & KIRAN KUMAR KAKAR LAPUDI, INDIA'S ECONOMY IN THE GLOBALISED ERA 252-254 (2013).

⁶ The workers in the developing countries are aware of the great disparities in the earning levels between developed and developing countries. They want to sell their labour at highest price. See GARY. S. FIELDS, WORKING HARD, WORKING POOR 71 (2012).

⁷ See generally A.A.I.N Wickramasinghe & Wijitapure Wimalaratana, *International Migration and Migration Theories*, 1 SOCIAL AFFAIRS, 13-32 (Fall 2016). See also MARTIN RUHS, THE PRICE OF RIGHTS REGULATING INTERNATIONAL LABOUR MIGRATION 164 (2013). International community has a duty to facilitate migration of low skilled workers from poor countries to high income countries to reduce global poverty and inequality.

2.1.3. Neoclassical Economics – Micro Theory and interstate migration

According to this theory migration is an investment in human productivity. It is based on the utilization of human capital. The individual cost benefit model as propounded by the Micro Theory is closely related to Human Capital Theory. Like every investment it has cost and benefit.⁸

The human capital characteristics like education, training, language skills etc will decide the pattern of migration. If the human capital is great, the rate of remuneration or the employment opportunities will be greater.⁹The skilled migrants have more prospects for migration.¹⁰ Low skilled workers from low wage countries migrate to countries having higher wages while high skilled workers and labour intensive industrial capital will flow to low wage countries.¹¹ The decision to migrate is the result of a rational calculation of the positive and negative aspects of migration. The positive effect is the higher productivity and higher wages. The negative effects includes the cost of travelling, the expenses for maintenance, the pain of separation from their family, the cost of learning a new language, new culture and a new labour market.¹²

⁸ See Douglas. S. Massey, *Social Structure, Household Strategies and the Cumulative Causation of Migration*, 56 POPULATION INDEX, No.1, 3, 5 (Spring 1990).

⁹ See Douglas. S. Massey, Joaquin Arango, Graeme Hugo, Ali Kouaouci, Adela Pellegrino & J. Edward Taylor, *Theories of International Migration, A Review and Appraisal*, in THE MIGRATION READER, EXPLORING POLITICS AND POLICIES 36-40 (Anthony .M. Messina & Gallya Lahav ed., 2006).

¹⁰ See *supra* note 6 Lucia Kurekova at 6. Human capital theory is criticized on the ground that migration is the result of transformation of social and economic institutions that mobilize labour apart from utilization of human capital. See *supra* note 8 at 6-7.

¹¹ See ROEL JENNISSEN, MACRO ECONOMIC DETERMINANTS OF INTERNATIONAL MIGRATION IN EUROPE 44 (2004).

¹² See HAROLD DUNNING, TRADE UNION AND MIGRANT WORKER 9 (1985). See also W.A.V. CLARK, HUMAN MIGRATION 67(1986).

Neoclassical Economics Micro Theory postulates that individuals expect net positive results from migration. The earnings in the receiving place will be higher than the costs of migration. Same principle applies to interstate migration. The interstate migration also involves cost and benefits. The migration makes changes in the social and cultural life of the migrant construction worker and his family. Due to migration there will be disintegration of the joint family.¹³ The migration of male members increases the burden of women and children in the family.¹⁴ The migrant construction worker may not be able to send money regularly due to the casual nature of his work. This will adversely affect the education of children especially the girl children. The migrant construction worker himself faces several hardships in the new place. It is not easy to make social contacts at the place of employment because of a different language and culture. Social integration of the illiterate migrants in a new atmosphere, with differences in food habits, language, culture, religious attitude and way of life is difficult.¹⁵ The worker makes a comparison of costs and benefits and makes a rational decision. They expect that they can save and make some remittance to their family in their native place by utilizing their human capital.¹⁶ The migration of construction workers

¹³ Majority of the migrant workers leave their family in the home State because of the high cost of living at the workplace or due to the obligation to look after the joint family property or aged members. All these factors adversely affect the traditional nature of the family.

¹⁴ In international migration, costs are high for illegal migrants. When number of family members increases fear of detection is high. Hence they leave behind the family members. See Barry R. Chiswick, *Illegal Immigration and Immigration Control*, 2 JOURNAL OF ECONOMIC PERSPECTIVES, No.3, 101, 115 (Summer 1988).

¹⁵ See *supra* note 3 at 134-154.

¹⁶ See Ravi Srivastava & S. K. Sasikumar, *An Over View of Migration in India, Its Impact and Key Issues* 5-8 (May 5, 2017), <http://www.eldis.org/vfile/upload/1/document/0903/Dhaka-CP-2.Pdf>.

to Kerala is the result of their rational calculation that the benefits outweigh the costs of migration.

2.1.4. Theory of New Economics of Migration and interstate migration

This theory has arisen as a criticism on the neo classical theories. According to New Economics of Migration, the family and not the worker takes the rational decision to migrate. Migration may be used as a strategy to raise more funds so that the family can invest and participate in the local development.¹⁷ The family can decide how to allocate their family labour. Some members may be engaged to do the local work while others may migrate. It may be due to the failure in local labour market, insurance or credit.¹⁸ Families can involve in local labour and migration at the same time. As such it has nothing to do with the wage difference in receiving and sending areas. It all depends on the decisions of the family to diversify the risks. The individual cannot take a decision in isolation with the family.¹⁹

New Economics of Migration states that social entities especially the family of the worker may take the decision to send one or some of its members to outside for various reasons. It may be to minimize the risks of economic liabilities of the family or to improve the financial conditions of the family or to meet a particular expense of the family.

¹⁷ See *supra* note 8 at 9.

¹⁸ Developed countries have institutions like insurance, credit and labour to minimize the risks of households. The developing and under developed countries lack these institutions in an effective way and face risks due to low prices, famine, unemployment.etc. See Sagynbekova & Lira, *The Impact of International Migration : Process and Contemporary Trends in Kyrgyzstan* 10-11 (May 8, 2017) , <http://www.springer.com/978-3-319-26990>.

¹⁹ See *supra* note 9 at 39-40. See also *supra* note 7 at 23.

The principles of New Economics of Migration is relevant for interstate migrants also. Most of the interstate migrant construction workers come to Kerala in groups along with the family members or friends and stay for particular a period and return to their home place. They save some money for a family purpose and leave the workplace. It can be viewed as household decision to meet a particular financial emergency. Wage differentials and family decision are not mutually exclusive. Wage differential is an important factor that is relied on by the family to take a decision to migrate or not.

2.1.5. Dual Labour Market Theory and interstate migration

Migration is caused by the pull factors in the receiving country. The industrialized countries are in demand of labour from other countries. It is due to the structure of their economy. In every industrialized society there are two types of workers namely skilled workers in primary segment and unskilled workers in secondary segment.

Capital intensive technology is used in the primary segment and labour intensive technology is used in the secondary segment.²⁰

Local workers do not prefer secondary segment because occupational improvement is less. So there is a labour shortage at the bottom level. The migrants are ready to work for lower wages in the secondary segment of the

²⁰ See *supra* note 8 at 9-10. Though the migrants are employed in almost all types of work, they are concentrated at the bottom of employment ladder. They are employed in agriculture, mining, construction and different service areas such as catering, restaurants and domestic work. Especially the women migrants are concentrated in the bottom level. See also ILO, INTERNATIONAL LABOUR MIGRATION, RIGHTS BASED APPROACH 24, 26 (2010).

industrialized society.²¹ The push factors of sending country like unemployment and poverty are not considered in this theory.²² The theory states that international labour migration is due to demand of labour in the industrialized country.²³ The employment in the secondary segment is through formal recruitment by the employer or Government²⁴ on behalf of the employers rather than an individual initiative of the worker.

The wage differences in the sending and receiving countries are not relevant in this theory.²⁵ Native workers are not ready to do the unskilled jobs in the secondary segment of their economy and the employers have no alternative other than to recruit migrant labour. The principle finds place in interstate migration also. The rural to urban migration can be explained on the basis of this theory. In Kerala, the majority of people prefer white collar jobs and not ready to undertake the hazardous employment in the construction sector. It is considered as a degrading work by the literate workers of Kerala.

The construction workers from other States are ready to do any type of jobs

²¹ See Sucha Singh Gill, *Migration of Labour in India*, 4 IJLE, No.41, 617, 618 (1998). See also Raul Delgado Wise & Humberto Marquez Covarrubias, *Understanding the Relationship Between Migration and Development, Towards a New Theoretical Approach*, 53 THE INTERNATIONAL JOURNAL OF SOCIAL AND CULTURAL PRACTICES, No.3, 85, 96 (Winter 2009).

²² See *supra* note 9 at 41.

²³ See *supra* note 11 at 46-47. See also *supra* note 4 at 11-14.

²⁴ Now the role of Government in the process of recruitment has decreased. The recruitment agencies became more powerful. Irregular and temporary migration has increased. See Khalid Koser, *Protecting the Rights of Migrant Workers*, in NEW PERSPECTIVES ON INTERNATIONAL MIGRATION AND DEVELOPMENT 99-103 (Jeronimo Cortina & Enrique Ohoa Reza ed., 2013).

²⁵ There is an argument that the theory of Dual Labour Market system is not applicable to internal migration. See M.S.A. Rao, *Some Aspects of Sociology of Migration*, 30 SOCIOLOGICAL BULLETIN, No.1, 21, 24-25 (Mar.1981). The educated people from Kerala, Tamil Nadu, Karnataka and Bengal have migrated to different States in search of white collar jobs. The unskilled and semi skilled workers from States like Rajasthan, Andhra Pradesh, Bihar, Orissa have migrated to other States for jobs in the informal sectors. So it is not true to say that all migrants occupy jobs in secondary segment.

under unsafe conditions. The principle of recruitment by the employer as postulated in the theory is not fully applicable in Kerala.

2.1.6. World System Theory and interstate migration

According to this theory migration is the result of unemployment and under employment created by the capitalist markets of developed economy. The capitalist nations penetrated in to developing and under developed nations to exploit the cheap labour.²⁶ The capitalists destroyed the social and economic foundation of the traditional rural agrarian markets. The people who formerly engaged in agriculture and other traditional occupations were employed in the production of raw materials for industries. The job opportunities for men decreased in the traditional labour market and they were forced to migrate in search of jobs.²⁷ The capitalist firms offered jobs for women and socialized them. It was a new experience for the people .It created a new sense of individualism, private gain, culture and labour mobility.

In the modern time, labour migration is facilitated by neocolonial Government and multinational companies. The foreign investment and globalization have driven the people to migrate to different parts of the world especially to the global cities. The capitalists expanded the communication links and transportation links to peripheral countries where they have invested money. The mass communication has created cultural linkage between capitalist countries and peripheral countries which also facilitated migration.²⁸

²⁶ *See supra* note 4 at 17-18.

²⁷ *See supra* note 11 at 52-53.

²⁸ *See supra* note 9 at 42 to 43.

World System Theory analyses migration in the context of globalization.²⁹ Globalization is a reason for interstate migration of construction workers. The multinationals penetrated in to the local economy and destroyed its agricultural foundations. The local entrepreneurs could not compete with the technology and wealth of multinationals .It resulted unemployment and underdevelopment in local economy. People migrated for employment opportunities in the industrial sector of urban areas. The globalization has accelerated the construction businesses in Kerala. The multinationals companies employ migrant construction workers on a large scale because the local labour supply is inadequate to cater their needs.

2.1.7. Net Work Theory and interstate migration

Net Work Theory of Migration is a part of Perpetuation Theory which states that migration makes more migration. It explains the reasons for continuation of migration. There is a connection between migrants and the other workers of the native State through kinship, friendship and community. The migration is costly for the first migrants who have no net work or social ties in the State of employment. Net work brings cumulative causation of migration.³⁰ The earlier migrants encourage others to migrate by reducing the cost as well as risks for subsequent migration. The network expands by new

²⁹ The study conducted by Gulati Institute of Finance and Taxation, observed that current migration is the result of globalization, urbanisation and informalisation of labour. See M.P.JOSEPH, D. NARAYAN & C.S VENKATESWARAN, DOMESTIC MIGRANT LABOUR IN KERALA 4-5 (2013).

³⁰ See *supra* note 8 at 8. See generally Sonja Haug, *Migration Net works and Migration Decision Making*, 34 JOURNAL OF ETHNIC AND MIGRATION STUDIES, No.4, 585-605 (May 2008).

migration.³¹ The migrant net work forms ethnic groups in the receiving regions. The expected profit from migration increases through the net work.³² Net work serves as social capital for migration.³³ The migrant net work can help the subsequent migrants in finding work, accommodation and in adjustment with a new environment.³⁴

The influence of net work is very significant for interstate migration of construction workers. Earlier, majority of workers were migrating to Kerala through the contractors. Now the role of the contractors in facilitating migration is decreasing. The important channels for their entry are friends or relatives.³⁵ The workers belonging to a particular area or speaking a common language live together and help each other. The groups facilitate further migration through their network.

2.1.8. Theory of Cumulative Causation and interstate migration

The Theory of Cumulative Causation is a part of the Perpetuation Theory. Migration begets migration. The first movement of migration results in more migration from their community or neighborhood in various ways. The reasons for subsequent migration may not be same as that of the earlier migration.

³¹ See *supra* note 9 at 43-45. See also IAN GOLDEN, GEOFFREY CAMERON & MEERA BALARAJAN, EXCEPTIONAL PEOPLE, HOW MIGRATION SHAPED OUR WORLD AND DEFINE OUR FUTURE 103-109 (2011).

³² See *supra* note 11 at 54.

³³ See *supra* note 18 at 15-16.

³⁴ See K.C.ZAKARIAH, E.T.MATHEW & S.IRUDAYA RAJAN, THE DYNAMICS OF MIGRATION IN KERALA, DIMENSIONS, DIFFERENTIALS AND CONSEQUENCES 148 (2003).

³⁵ See *supra* note 29 at 13.

The following socio economic factors potentially affects migration in various ways.³⁶

2.1.8 .1. Relative Deprivation

When one member of a rural household family migrates and sends remittance to his family, the financial position of that family gets improved. It will create a sense of deprivation in the other families who will be living in poverty and they also decide to migrate. When more and more persons migrate the relative inequality of households and the tendency to migrate increases. When financial position of the neighbors are better, the motivation will be greater.³⁷

2.1.8 .2. Distribution of land

The relatively better off migrants usually purchases lands from their savings. They may not cultivate the land immediately. They will maintain the land as an investment. When migration increases, more lands will be remained uncultivated and thereby the agricultural labourers of that region will lose their jobs. Due to unemployment and poverty they will be forced to out-migrate. This increases migration.

2.1.8 .3. Organisation of agricultural labour

The migrant households who are in better financial position use capital intensive technology in their land and replace the traditional laborers. When

³⁶ See supra note 4 at 20-24.

³⁷ See supra note 8 at 13.

employment opportunities in the agricultural sector are reduced, the workers are forced to migrate in search of job opportunities.³⁸

2.1.8 .4. The culture of migration

The migration to urban area or to a foreign place changes the attitude, lifestyle and culture of migrants. It increases consumerism. They want to continue their new lifestyle and decide to migrate again. This mobility influences the community also.

2.1.8 .5. Regional distribution of human capital

At the initial time migration is selective. Usually the educated and skilled people migrate for employment. The number of females, children and aged population in the native States increases and the number of healthy working adults decreases.³⁹ This result in the deprivation of human capital and productivity in home State. As a result the development in that place gets deteriorated. Then people migrate to more developed areas. The theory is related to brain drain⁴⁰ of the skilled migrants. Selectivity of migration causes development in the receiving region, but it causes under development of the sending region.

³⁸ See Sangita Kumari, *Rural Urban Migration in India ; Determinants and Factors*, 3 INTERNATIONAL JOURNAL OF HUMANITIES AND SOCIAL SCIENCES, 176 (Mar. 2014).

³⁹ See *supra* note 3 at 132.

⁴⁰ There is a positive effect on brain drain .The skilled migrants send their remittances to their households. If the money is wisely invested in agriculture, industries or other productive activities migration will lead to the development of sending regions.

2.1.8 .6. Social labeling

When certain jobs are done by migrants, it is labeled as migrant jobs. The local workers would not be ready to do such jobs. As a result the employers have to recruit migrant laborers.

The Theory of Cumulative Causation can be used to explain interstate migration of construction workers. The theory states that migration of workers itself causes further migration. When financial position of a migrant family increases it will induce other workers to migrate. In case of construction workers in Kerala, the better income prompts the flow of more new migrants from their innate places to the field. There is a practice among the affluent immigrants to purchase lands as future investments. The practice of keeping agricultural lands uncultivated and the use of capital intensive technology leads to unemployment of other workers. The regional distribution of human capital is explained as a reason for underdevelopment of region leading to migration. The underdevelopment and unemployment of home place is a reason for interstate migration of construction workers. The Theory of Social Labeling of certain jobs as migrant jobs is evident in construction work. The highly risky jobs are always reserved for internal migrants because of their vulnerability. Thus it can be seen that the Theory of Cumulative Causation gives some explanation for interstate migration of construction workers.

2.1.9. Institutional Theory and interstate migration

According to the Institutional Theory, the institutions and organizations act as the social capital for migration. The capital rich countries cannot provide

immigrant visas to all those who wish to migrate.⁴¹ This imbalance is exploited by the profit organization to create a black market for migration.⁴² The profit oriented organizations provide a variety of services to migrants on payment of fees on the strength of their underground black market.⁴³ Humanitarian organizations are not profit oriented and they protect the victims. They stand for legal migration. As time passes these institutions become stable and constitute another platform for providing the social capital for migration.⁴⁴ Frequent migration between countries will lead to more facility for migration like lowering the cost of migration. The humanitarian organizations will reduce the emotional cost of migration.⁴⁵

The Institutional Theory states that there are many institutions to facilitate and support international migrants in the destination countries legally or illegally. Illegal channels of migration increase the irregular migration. The interstate migrant construction workers have the freedom to move freely throughout the territory of India.⁴⁶ However the lobby of contractors or middlemen is very active in recruiting internal migrants. They get commission from both the employees and workers.

It can be found that all the above referred theories are applicable to interstate migration in different angles. The wage differences, utilization of

⁴¹ When immigration laws are strict, unskilled migrants are forced to illegal migration. See Barry R.Chiswick, *Is The New Immigration Less Skilled Than The Old*, 4 JOURNAL OF LABOUR ECONOMICS, No.2, 178-179 (Apr. 1986).

⁴² See *supra* note 9 at 46.

⁴³ See Brigitte Granville, *Labouring Abroad*, 59 THE WORLD TODAY, No.2, 15, 16 (Jan.2003).When migration rules are more harsh, illegal organizations become more powerful.

⁴⁴ See *supra* note 4 at 20-22.

⁴⁵ See *supra* note 11 at 55-56 .

⁴⁶ Art.19 of the Constitution of India.

special skills of migrants, family decision to diversify the risks, demand of unskilled labour in the secondary labour segment, globalization, migrant networks, unemployment and underdevelopment of regions, influence of contractors etc are decisive in interstate labour migration. All these factors point out that migration of construction workers to Kerala is a strategy for their livelihood and they require social protection from State.

2.2. THEORIES OF LABOUR WELFARE

The employer and the State have the moral and legal obligation to provide labour welfare to migrant workers. During the early stage of capitalism, the capitalist was a man and worker was a thing. The employer purchased the worker as his personal property. The worker could not contract any rights from the employer. The relationship was based on coercion. When the status of the worker improved from slave to serf, he could contract some rights. Even then there was no free will, the worker was a half slave. In the next stage of development the relationship was changed from status to contract. The relationship is based on freewill. Now the labour is not a slave or servant. The worker is a free member of society with distinct rights.⁴⁷ There are different theories on labour welfare, namely Police Theory, Religious Theory,

⁴⁷There are two groups with conflicting interests namely employers and labour. It is the duty of the State to intervene and protect the interests of the workers. *See S.R.SAMANT, INDUSTRIAL JURISPRUDENCE, A TREATISE ON THE THEORY AND PRACTICE OF INDUSTRIAL LAW WITH SPECIAL REFERENCE TO INDIA 7-8 (1961).*

Philanthropic Theory, Trusteeship Theory, Placating Theory, Public Relations Theory and Functional Theory.⁴⁸

2.2.1. Police theory

According to the Police Theory, the workers are entitled to minimum standard of labour welfare. Man is selfish and self centered by nature. The person in power will always try to exploit those who are subordinate to him.⁴⁹ So the State has to police to prevent exploitation of weaker population. If the employer is not forced to introduce some welfare measures, he will exploit the labour.

The main emphasis of the theory is on the fear and not on the spirit of labour welfare. The unorganized workers like interstate migrant construction workers are always exploited by the employers and contractors as mentioned in the Police theory. So the State imposed certain statutory obligations on them to provide minimum labour welfare. There are certain social security legislation that imposes statutory obligations to provide benefits to migrant workers. If the employer fails in his duties, he is liable to penalty.

2.2.2. Religious theory

According to Religious Theory, man is a religious animal. The employer introduces labour welfare measures either for attainment of good in this life or

⁴⁸ See M.V. MOORTHY, PRINCIPLES OF LABOUR WELFARE 28 (1982). See also (Jan. 12, 2017), [hrmpractice.com/theories of employee-welfare /&http://www.scribd.com/doc/ 86481426/theories –of-lab-welfare.](http://www.scribd.com/doc/86481426/theories-of-lab-welfare)

⁴⁹ “The world now belongs to the wealthy and the illthly are alien to the resources of their country.” See V.R.KRISHNA IYER J., UNSPEAKABLE ANECDOTES 36(2012).

next life or an atonement for his sins. Any good work is considered as “Investment”.

The theory states that welfare measures for the migrant construction workers are introduced on religious grounds for the salvation of employees. In a profit oriented business one cannot expect that the employer would provide social security rights to migrants without any compulsion.

2.2.3. Philanthropic theory

According to the Philanthropic Theory, man’s love for mankind is the guiding factor of labour welfare. Human beings have a basic instinct to help his fellow being. The employer has compassion towards his workers and it induces him to provide welfare for them. He is ready to make sacrifices for the workers.

Philanthropic Theory believes that employer has some inherent virtues and he introduces welfare measures for workers out of his love and compassion to them. All the human rights documents and the Constitution of India recognizes the principle of fraternity and common brotherhood. The employer has the duty to respect, protect and promote the basic rights of migrant construction workers because all human beings are equal in dignity and rights. But in reality the migrant construction workers are discriminated everywhere.

2.2.4. The Trusteeship theory

The Trusteeship Theory is also known as the Paternalistic Theory. The employer holds the assets and profits for the benefit of himself, workers and the society. The employer has a moral responsibility to look after the workers like

a trustee and to protect their interest. Therefore labour welfare measure are the outcome of moral responsibility of employers.

Trusteeship Theory consider workers as wards who requires care from employers. The migrant construction workers are illiterate and ignorant of their rights. The employers being in dominant position have a moral obligation to look after the interest of migrant construction workers as their guardian. The State has to secure the social security rights of vulnerable groups like migrant construction workers as parent patriae. State cannot plead the financial incapacity as defence.

2.2.5. The Placating Theory

The Placating Theory suggests that the labour welfare measures act as pacifiers. The labour associations are becoming stronger and more demanding. They are better aware of their rights and privileges. Timely and periodical introduction of welfare measures will pacify the workers community and ensure their cooperation.

The international community was forced to recognize the basic rights of workers due to the unrest of the workers after the world wars. Right to association is a basic right of a worker. The trade unions can persuade the employers to protect the rights of workers. If there is an association for migrants, their bargaining capacity will be increased .It will force the State and employers to introduce social security rights.

2.2.6. The Public Relations theory

The Public Relations Theory believes that the welfare measures are introduced to improve the relations between management and labour and management and public. Welfare measures will raise the public image and goodwill of the industry. It will act as advertisement for its business and help the employer to make healthy public relations.

The employers have a social responsibility towards the public. Public Relations Theory is based on the maintenance of goodwill of an industry. Public shall grade an industry that protect the rights of interstate migrant workers employed by it. The law abiding citizens are respected by the society.

2.2.7. The Functional Theory

The Functional Theory is also called Efficiency Theory. The welfare measures are used to preserve and improve the efficiency of workers. If the efficiency of workers are increased, the productivity of the business would increase. All the trade agreements shall take in to account of labour standards. If labour standards are included in the trade agreements the productivity of labour would be increased.⁵⁰

When the employer takes care of his workers, they will offer him the best.⁵¹ The Functional theory states that labour welfare measures are introduced to enhance the efficiency of workers. Social security rights will lead to

⁵⁰ See George Matzner, *International Labour Standards and the Social Dimensions of Open Trading Regimes*, in *LABOUR STANDARDS: GLOBAL PRACTICES* 62 (M.N.Bhavani ed., 2008).

⁵¹ See PRATIBHA GOYAL, *LABOUR WELFARE AND JOB SATISFACTION* 6-7 (1985). See also MEENAKSHI GUPTA, *LABOUR WELFARE AND SOCIAL SECURITY IN THE UNORGANISED SECTOR* 49-51(2007).

increased productivity of migrant construction workers. When the workers get an assurance that they and their family will be protected by the State and employer in case of any emergencies, they would give their best to production. So the social security measures will ultimately lead to the development of society as a whole.

The above discussed theories emphasize the legal and moral obligation of the State and employers to secure the welfare of workers. The basic objective of labour laws is to secure the welfare of the workers. Social security measures are the crux of labour welfare laws in any democratic society. The primary beneficiaries of labour welfare measures are the workers and their family. But the ultimate beneficiary is the society itself. Good conditions of work and productive employment in conditions of dignity and security will lead to the development of a nation. The nation cannot progress without the development of its human resources.

2.3. CONCEPT OF SOCIAL SECURITY

According to John Rawls, “One cannot expect an ideal society in which all can achieve their goals or in which there are no conflicting demands and the demands of all go together without any force. It is a society in a certain sense beyond justice.”⁵²

State has to intervene and pay more attention to give equal treatment to those persons who have fewer assets and those born in to less favourable position.⁵³ Social justice requires special care to vulnerable people like migrant workers. The employment of the migrant construction workers is precarious in

⁵² See JOHN RAWLS, A THEORY OF JUSTICE 281(2005).

⁵³ *Id.* at 100.

nature. The slightest protest or complaint against their working condition will lead to the loss of their employment.⁵⁴ They do not get regular income. If they are unable to work due to their sickness, invalidity, old age, pregnancy, motherhood or due to other contingencies their family would face utter starvation.

According to International Labour Organisation (ILO)

“Social security is the protection that a society provides to individuals and households to ensure access to health care and to guarantee income security particularly in cases of old age, unemployment, sickness, invalidity, work injury, maternity or loss of a bread winner”.

The social security schemes shall focus on the principles of International Covenant on Economic, Social and Cultural Rights (1966) and the directive principles of state policy of the Constitution of India. It shall prevent deprivation, assure basic income to meet the basic needs of an individual and his family and protect income against loss due to contingencies.⁵⁵

The early concept of social security was limited to relief to poor. The second phase of social security means social security to all those who work depending the insurance to be paid by the workers and employers. The most advanced concept of social security envisages comprehensive social security coverage to all based upon contribution by employers, workers and the State. The State fund is based on the income derived by taxation.⁵⁶ The basic social security guarantees offered by the State shall include access to essential health

⁵⁴ See Anibel Ferus Comelo, *Migration and Precariousness-Two Sides of the Contract Labour Coin*, XLIX EPW, No.36, 45(Sept.6, 2014).

⁵⁵ See Paragraph 8. 444 of the Report of the Second National Commission Labour (2002).

⁵⁶ See Asbjorn Eide, *Economic and Social Rights*, in HUMAN RIGHTS ; CONCEPTS AND STANDARDS 148 (Janusz Symonides ed., 2000).

care including maternal care, basic income security for children, aged population and for persons of working age who are unable to earn due to sickness, unemployment, maternity and disability. Social security will prevent, control and reduce poverty, inequality, social exclusion and social insecurity. It will encourage gender equality and racial equality and support the transition of informal employment to formal employment. Social security acts as automatic social and economic stabilizer in times of crisis.⁵⁷

2.3.1. Social justice and social security rights

Social justice and social security are inseparable in a welfare State like India.⁵⁸ The foundation of social security is distributive justice. The poor unorganised migrant construction worker has the equal right to development.

According John Rawls,

Each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others. The social and economic inequalities are to be arranged so that they are both reasonably expected to be every one's advantage and attached to positions and offices open to all. The distribution of wealth and income need not be equal. But it

⁵⁷ See the preamble of Social Protection Floors Recommendation (2012). See also Social Security (Minimum Standards) Convention (1952). See also Paragraph 2 of General Comment No.19 of the Committee on Economic, Social and Cultural Rights, on The Right to Social Security (art. 9), E/C.12/GC.19 dated 4/2/2008.

The right to social security encompasses the right to access and maintain benefits whether in cash or in kind, without discrimination in order to secure protection inter alia from (a) lack of work related income caused by sickness, disability, maternity, employment injury, unemployment, old age, or death of a family member (b) unaffordable access to health care (c) insufficient family support, particularly for children and adult dependents.

⁵⁸ See K.MADHAVANPILLAI, LABOUR AND INDUSTRIAL LAWS 267 (2000).

must be distributed to the advantage of every one.⁵⁹ Otherwise it will lead to injustice.⁶⁰

2.3.2. Duty of the State to provide social security rights

According to V.R .Krishna Iyer J.,

“The Constitution of India has made the entire people the shares of resources and powers of the country.”⁶¹

A laissez-faire State may neglect the social protection of workers. The welfare State cannot compromise the social security rights of workers for any reasons.⁶² Economic security includes security for employment.⁶³ The basic rights cannot be traded off for any reason. It is against social justice and the morality of State.⁶⁴

In earlier times the system of joint family supported the workers to meet urgent needs. After the disintegration of the joint family, it becomes the duty of the State to provide social security benefits.⁶⁵ State has a duty to protect its

⁵⁹ *Supra* note 52 at 60-61. According to Rawls, principles of justice provide a way of assigning rights and duties in the society. Each person possesses an inviolability founded on justice which even the welfare of society as a whole cannot override.

⁶⁰ See Jerome J. Shestack, *The Philosophical Foundation of Human Rights*, in HUMAN RIGHTS; CONCEPTS AND STANDARDS 31 (Janusz Symonides ed., 2000).

⁶¹ See V.R.KRISHNAIYER J., THE INDIAN LAW DYNAMIC DIMENSIONS OF THE ABSTRACT 87(2009).

⁶² State inaction and negligence are the reason for miserable life of workers. See Upendra Baxi, *Unorganised Labour, Unorganised Law*, in LABOUR LAW, WORK AND DEVELOPMENT, ESSAYS IN HONOUR OF P.G.KRISHNAN 3-16 (Debi.S.Saini ed., 1995).

⁶³ See T.S.Sankaran, *Social Security for Workers in Unorganized Sector*, in INFORMAL SECTOR IN INDIA, PERSPECTIVES AND POLICIES 407 (Amitabhkundu, & Alakh .N. Sharma ed., 2001).

⁶⁴ See Piyasiri Wikramasekara, *Globalisation, International Labour Migration and the Rights of Migrant Workers*, 29 THIRD WORLD QUARTERLY, No.7, 1247, 1258 (2008).

⁶⁵ When the person is unable to make income he has to support himself and family from his savings. If there is no savings, there should be somebody to support him like family, employer or State. See R.K.A. Subrahmania, *Social Protection of the Workers in the Unorganized Sector*, 48 IJIR SPECIAL ISSUE ON UNORGANISED WORKERS, No.3, 460,461 (Jan. 2013). See also Nagaseshamma, *Upliftment of Construction Labour Through Social Security Laws*, 1LLJ ,1, 2 (Feb.2014).

members against certain risks which they cannot manage alone.⁶⁶ They shall be protected by collective action of the society.⁶⁷

It is not necessary that individual must claim against the State. It is not based on fairness or morality, but it is a duty imposed by the Constitution.⁶⁸ The directive principles of state policy provide the necessary guidelines in formulating the schemes. Social security includes social assistance. It is noncontributory and is wholly funded by the State. The persons are subjected to means test. The eligible persons can claim it as a right.⁶⁹ The method of providing social security largely depends upon the resources and needs of the country.⁷⁰ Prime importance shall be given to basic needs like health care, food, nutrition, basic education, access to fresh water, sanitation and shelter.⁷¹

Decent work as put forwarded by ILO, envisages social security of workers. If a work do not offer the required social protection it cannot be considered as a decent work. When the migrant workers are deprived of social security they are deprived of decent work. A democratic State has the duty to ensure decent work for its people.

⁶⁶ ILO, APPROACHES TO SOCIAL SECURITY 83 (1942).

⁶⁷ See the Report of First National Commission on Labour 162 (1969). "Social security envisages that members of a community shall be protected by collective action against social risks causing undue hardship and privation to individuals whose prime resources can seldom be adequate to meet them."

⁶⁸ See Mahendra. P. Singh, *Constitutionalization and Realization of Human Rights in India*, in HUMAN RIGHTS, JUSTICE AND CONSTITUTIONAL EMPOWERMENT 40 (C.Rajkumar.K.Chockalingam ed.,2010).

⁶⁹ See N.H.GUPTA, SOCIAL SECURITY LEGISLATION FOR LABOUR IN INDIA 43 (1986).

⁷⁰ See S. C. SRIVASTAVA, TREATISE ON SOCIAL SECURITY AND LABOUR LAWS 7 (1985).

⁷¹ See DHARAM GHAI, DECENT WORK, OBJECTIVES AND STRATEGIES 124 (2006).

2.3.3. Branches of social security

Social security measures comprises of promotional measures and protective measures. The promotional measures includes financial assistance and provisions for education, health, nutrition employment etc. The protective measures includes pension, provident fund, maternity benefits etc.⁷² There are minimum nine branches of social security namely medical benefit, sickness benefit, unemployment benefit, old age benefit , employment injury benefit, family benefit, maternity benefit, invalidity benefit and survivors benefit.⁷³

Gender justice is a component of social security of women workers. The migrant women construction workers are victims of gender discrimination also. Gender equality is regarded as a human right and as well as a development goal.⁷⁴ The Committee on Economic, Social and Cultural Rights define gender as the cultural expectations and assumptions about the behavior, attitudes, personality traits, and physical and intellectual capacities of men and women, based solely on their identity as men or women.⁷⁵

⁷²See S.Sakthivel & Pinaki Joddar, *Unorganised Workforce in India, Trends, Patterns and Social Security Coverage*, 41 EPW, No.21, 2107, 2112 (May 27-Jun. 2,2006). See also Ramesh .C. Dutta, *Public Action, Social Security and Unorganized Sector* 33 EPW, No.22, L2,L2-L3 (May30-Jun.5,1998). Promotional social security programmes include employment guarantee scheme like Jawahar Rozgar Yojna, IRDP, etc. All the conventional social security programmes are protective social security.

⁷³ See articles 7 to 64 of Social Security (Minimum Standards) Convention (1952).

⁷⁴ See Paragraph 61 of the Report of UN System Task Team to the Secretary-General, *Realizing the Future We Want for All*, 23 (2012) (Nov.20,2017), www.un.org/millenniumgoals/pdf/Post-2015-UNTT-report.pdf.

⁷⁵ See Paragraphs 14 & 11 of General Comment No. 20 of the Committee on Economic, Social and Cultural Rights, on Non-discrimination in Economic, Social and Cultural Rights art. 2, Para.2 of ICESCR, E/C-12/GC-20 dated 2/7/2009.

Gender based assumptions and expectations generally place women at a disadvantage with respect to substantive enjoyment of rights, such as freedom to act and to be recognized as autonomous, fully capable adults, to participate fully in economic, social and political development and to make decisions concerning their circumstances and conditions.

The social security scheme for the unorganized workers shall be comprehensive.⁷⁶ Poor workers cannot be expected to become part of the contributory social security schemes. They are struggling hard to earn money for their livelihood.

Poverty is the major cause of migration. The migrant workers are vulnerable because of their poverty. Poverty is not an economic phenomenon alone.⁷⁷ It is the result of social and economic forces. So it is not possible to ameliorate the conditions of migrant construction workers simply by reducing their poverty. Their economic and social conditions need to be improved.

2.4. CONCLUSION

Interstate labour migration is a multifaceted phenomenon. Sound knowledge of reasons for labour migration is critical for making a sound policy for facilitating interstate migration. The Neo Classical Economics Macro Theory states that wage differences existing between different regions are the reason for labour migration. Dual Labour Market Theory provides that demand for cheap labour in the secondary segments of the industrialized societies cause labour migration. The Neo Classical Economics Micro Theory argues that migration is based on the human capital. The workers expect higher earnings

⁷⁶ See Paragraph 7.448 of the Report of the Second National Commission on Labour (2002).

The Social Security measures for the Unorganised Workers should include health care, maternity and early child care, provident fund benefits, family benefits, amenities ,benefits including housing, drinking water, sanitation, etc. compensation or employment injury, retirement and post-retirement benefits, cover in cases of loss of earning or the capacity to earn, schemes either independent or in association with the Government, Welfare Bodies, NGOs and Social Organisations, for the up gradation of skills and the education of workers, and elimination of child labour, forced labour, and unfair labour relations and practices.

⁷⁷ See K.PRATAP, RURAL LABOUR IN INDIA, PROBLEMS AND WELFARE SCHEMES 6-7(1992).

and a positive result of migration. The New Economics of Migration is based on the premise that migration of labour is essentially a family decision to diversify the family risks. According to the Net Work Theory, migrant net work provides the social capital for subsequent migration. World System Theory states that migration is the result of capitalist influences on local economies. The Theory of Cumulative Causation explains migration on the basis of unemployment, underdevelopment and decline in traditional occupation of native States. It suggests that migration itself begets more migration. Though the above said theories directly relate to international migration, they are applicable to interstate migration also. The construction workers migrate to Kerala due to various factors like wage differences, demand of cheap labour, unemployment and under development of home place, effect of globalization, decline in agricultural income etc. It can be understood that migration is always a survival strategy of poor people whether it is national or international. Migration involves pain and sacrifices. People from other States decide to migrate to Kerala because they presume that their life will be better by migration. They expect both social and economic advancement in life.

Labour welfare includes amenities at workplace and good working conditions. Good working conditions includes social security of workers. The theories like Police Theory, Religious Theory, Philanthropic Theory, Trusteeship Theory, Placating Theory, Public Relations Theory and Functional Theory lay down that employer has the legal and moral obligation to provide

labour welfare to interstate migrant construction workers. It is not the charity of the State or employers, but it is a basic right of the workers.

Social security is based on social justice and human dignity. There shall be distributive justice. State has the duty to ensure social protection to interstate migrant construction workers from the social and economic insecurities created by unforeseen contingencies. Social security of migrant construction workers is essential for the development of the worker and the State. The denial of social protection amounts to the denial of decent work for migrants. Gender equality is an important criterion of decent work.

In practice, interstate migrant construction workers do not get the social and economic improvement by migration. They have no access to welfare measures and social security rights. They are discriminated and employed under inhumane conditions without complying with the welfare provisions. They are employed for long hours and for lesser wages. They are living under unhygienic conditions. Migrant women construction workers and migrant children suffer gross exploitation at social and economic life. The labour welfare and social security is not materialized for the unorganized interstate migrant construction workers in Kerala. There is a wide gap between the ideals of social justice and the real life of interstate migrant construction workers.

CHAPTER III

RIGHT TO SOCIAL SECURITY OF MIGRANT WORKERS; HUMAN RIGHTS PERSPECTIVE

Right to social security is fundamentally a human right. The interstate migrant construction workers has an inherent and inalienable right to social security. According to the World Migration Report, migration is not a personal matter of workers, it is directly connected to the development of a nation.¹

Both the sending and receiving regions enjoy the benefit of migration. Migration reduce poverty, hunger, child mortality and achieve gender justice. At the same time migration can become a debatable issue in political and diplomatic relations between States.²

¹ See IOM, Migrant Wellbeing and Development, World Migration Report 31 (2013) (Jun. 25, 2017), [publications-iom-int/books/world-migration-report-2013](https://publications-iom.int/books/world-migration-report-2013).

² See Philip Martin, *Labour Migration and Development Indicators in the Post-2015 Global Development Framework*, in *MIGRATION AND THE UNITED NATIONS POST-2015 DEVELOPMENT AGENDA 87* (Frank Laczko & Lars Johan Lonnback ed., 2013) (Nov.22, 2017), publication-iom-int/system/files/pdf/migration-and-the-post-2015-agenda.pdf. The migration has some evil effects like social unrest and discrimination among people. Migration is the result and reason for conflicts in society. See also Juhani Lonnroth, *The International Convention on the Rights of All Migrant Workers and Members of Families in the Context of International Migration Policies ; An Analysis of 10 Years of Negotiation* 25 IMR SPECIAL ISSUE : UN INTERNATIONAL CONVENTION ON THE PROTECTION ON THE RIGHTS OF ALL MIGRANT WORKERS AND THE MEMBERS OF THEIR FAMILIES, No.4,710,711(Winter1991). See also ANDRES SOLIMANO, *INTERNATIONAL MIGRATION IN THE AGE OF CRISIS AND GLOBALISATION, HISTORICAL AND RECENT EXPERIENCE* 8 (2010).

Nations give preference to the interests of their own nationals over migrant workers.³ The States can legitimately make some distinctions between nationals and migrants in the enjoyment of certain rights. But there can be no distinction on basic rights.⁴ The nations have an obligation to look after the basic needs of migrants.⁵ States categorizes women, children, persons with disabilities and refugees⁶ as vulnerable group and offer protection. Migrants do not get the required protection as vulnerable groups.⁷ The Governments are not taking any active interest in protecting the rights of their citizens who had migrated for employment.⁸

³ See Martin Ruhs, *Economic Growth and Labour Immigration Policy*, 24 OXFORD REVIEW OF ECONOMIC POLICY, LABOUR MIGRATION IN EUROPE 403, 404 (Autumn 2008). See also IOM, *World Migration, Costs and Benefits of International Migration*, World Migration Report Series, Vol .III, 208 (2005). The policies focus on nationalism, economic efficiency, distribution and national identity. The rights of non nationals are not considered.

⁴ See Guy.S.Goodwin Gill, *International Law and Human Rights ; Trends Concerning International Migrants and Refugees* 23 IMR SPECIAL ISSUE INTERNATIONAL MIGRATION AN ASSESSMENT FOR THE 90'S, No.3, 526, 537 (Autumn 1989). See also BILL JORDAN & FRANK DUWEL, *MIGRATION, THE BOUNDARIES OF EQUALITY AND JUSTICE* 59 (2003). The host countries think that conferment of economic rights to migrants may create certain issues in the national politics. Nationalists argue that States are completely free to design the policy of migration according to the interest of their citizen and the globalists argue that there shall be an international system to monitor international labour migration to secure the welfare and sustainable growth of all.

⁵ The migration is a co development issue. It is advantageous to the sending regions and receiving regions. So international cooperation is needed for managing migration. From a development perspective, nations shall try to control migration by removing the root causes of migration like poverty and under development of the home place. See Jonathan Crush, 4 *The EU-ACP Migration & Development Relationship*, MIGRATION & DEVELOPMENT, Issue I, 41-43 (2015).

⁶ The unwillingness or incapacity of the home country to guard against persecution for reasons like race, nationality, political or other opinion are the major reasons for refugee movements. See Sadako Ogata, *Mixed Migration : Strategy for Refugees and Economic Migrants*, 17 HIR, No.2, 30 (Spring 1995).

⁷ See generally SUSAN. F. MARTIN, *INTERNATIONAL MIGRATION, EVOLVING TRENDS FROM EARLY 20TH CENTURY TO PRESENT* 117-121 (2014). Issues of migration are addressed in the context of trade agreements only. While making immigration policies adequate attention is not given to the provisions of trade agreements. As a result migrant's real issues are not reflected in immigration policies and trade agreements.

⁸ See *supra* note 2 ANDRES SOLIMANO at 18-19.

It is the duty of the international community to regulate the market and protect the human rights of migrant workers⁹.

The migrant workers have the inalienable human right to take part in the development and enjoy the benefits of development.¹⁰ In a globalised society, certain activities are outside the traditional control of States. The capital becomes more powerful and is able to control the Government.¹¹ Rich countries take the decisions on market regulations.¹² The multinational companies are blatantly violating the labour rights of unorganized workers especially the right to social security.¹³

State can effectively control such activities through the medium of human rights because the human rights have global application.¹⁴

⁹ See Adalberto Perulli, *Globalisation and Social Rights*, in ECONOMIC GLOBALIZATION AND HUMAN RIGHTS 93-95 (Wolfgang Benedek, Koen De Feyter & Fabrizio Marrella ed., 2007).

¹⁰ Art. 1 of The Declaration on the Right to Development (1986) states that Right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized. Art.2 (1) states that the human person is the central subject of development and should be the active participant and beneficiary of the right to development.

¹¹ See Guy Standing, *Globalisation : The Eight Crises of Social Protection*, 45 IJLE, No.1, 28-35 (2002). See also Werner Sengenberger, *International Labour Standards in the Globalised Economy : Obstacles and Opportunities for Achieving Progress*, in GLOBALISATION AND THE FUTURE OF LABOUR LAWS 331 (John D.R.Craig & S.Michel Lynk, ed.,2006). The International Labour Organization had been warning that uncontrolled international trade and investment flows would deteriorate labour conditions and create hardships .

¹² See GARY. S. FIELDS, *WORKING HARD, WORKING POOR* 72-75 (2012). See also *supra* note 4 BILL JORDAN & FRANK DUWEL at 156. National Constitutions guaranteed equality and justice between its citizens. It offer no protection against the injustice and inequality at the global level. See also Ryszard Cholewinski, *Inter National Labour Law and the Protection of Migrant Workers ; Revitalising the Agenda in the Era of Globalization*, in GLOBALISATION AND THE FUTURE OF LABOUR LAW 409 (John D.R. Craig & S.Michael Lynk, ed.,2006).

¹³ See *supra* note 11 Guy Standing at 30.

¹⁴ See Jernej Pikalo, *Economic Globalisation ,Globalist Stories of State and Human Rights*, in ECONOMIC GLOBALIZATION AND HUMAN RIGHTS 32-34 (Wolfgang Benedek, Koen De Feyter & Fabrizio Marrella ed.,2007).

The human rights movements received an impetus in the international scenario after the formation of the United Nations Organization.¹⁵

UNO¹⁶ came in to existence on October 24, 1945. As per the preamble of the UN Charter, one of the basic aims of UNO is to re-affirm the faith in fundamental human rights.¹⁷ The General Assembly and the Economic and Social Council are entrusted with the duty to promote and protect human rights and fundamental freedoms for all.¹⁸ International Labour Organisation¹⁹ had started its life in 1919. UNO and ILO has codified various documents on social security and related rights that are available for interstate migrant construction workers.²⁰ This chapter makes an attempt to analyse the human right perspectives of social security rights of interstate migrant construction workers.

3.1. HUMANRIGHT TO SOCIAL SECURITY

¹⁵ Hereinafter referred as UNO.

¹⁶ The international movement for the recognition and protection of the human rights started from the formation of League of Nations. The Slavery Convention (1926) adopted by the League of Nations. The Supplementary Convention on the Abolition of Slavery, Slave Trade, and Institutions and Practices Similar to Slavery was entered in to force in 1957. *See also* Human Development Report 40-41 (2015).

¹⁷ *See* the preamble and art.1 of U N Charter.

¹⁸ *See* articles 55, 13, 62 and 68 of the U N Charter.

¹⁹ Hereinafter referred as ILO. It was a part of League of Nation. Now it is an organ of UNO.

²⁰ *See* RATHIN BANDYOPADHYAY, HUMAN RIGHTS OF NON CITIZENS, LAW AND REALITY 52-54 (2007). *See also* H .O. AGARWAL, HUMAN RIGHTS 101-103 (2002). *See also* S.K. KAPOOR, HUMAN RIGHTS UNDER INTERNATIONAL LAW AND INDIAN LAW 147-148 (2001).

Human rights are certain accepted standards of behavior that shapes the conduct of nations towards citizen and noncitizens.²¹ These rights are available to every human being simply because of their birth.²²

Human rights are classified in to three generations.²³ The right to work, social security and allied rights are coming under the second generation of human rights.²⁴ The migrant workers are entitled to both civil rights and economic rights.²⁵ A poor State can enforce civil and political rights but it is not easy to enforce economic rights.²⁶

²¹ See PETER R.BAEHR, HUMAN RIGHTS, UNIVERSALITY IN PRACTICE 1 (1999). It is a great limitation that the enforcement of human rights depends on the sweet will of the nations. See also PREETI SAMPAT, ECONOMIC GLOBALIZATION TODAY, RESOURCE BOOK 312-313(2003). The moral foundation of human rights can be found in art.1 of Universal Declaration of Human Rights (1948).

²² *Supra* note 20 S.K. KAPOOR at 1. See also Asbjorn Eide, *Economic and Social Rights*, in HUMAN RIGHTS ; CONCEPTS AND STANDARDS 109 (Janusz Symonides ed., 2000).

²³ The civil and political rights are considered as the first generation of human rights. They protect the people from the arbitrary State action. They are negative obligations imposed on the public authorities. The economic, social and cultural rights are the second generation of rights. It imposes some obligations on the State for securing the welfare of the people. Third generation rights are also called solidarity rights and comprises rights like right to environment, right to development and right to peace. See CHRISTIAN TOMUSCHAT, HUMAN RIGHTS BETWEEN IDEALISM AND REALISM 26-29 (2008).

²⁴ See A.C.L. DAVIES, PERSPECTIVES ON LABOUR LAW 44 (2004). There are certain modern economic and social rights that are incorporated under recent instruments such as European Union Charter of Fundamental Rights (E U Charter 2000) and (Revised) European Social Charter (ESC Charter 1996). The right not to be unfairly dismissed that is protected under art. 4(4) of ESC is an example of modern right. Workers should be given reasonable notice on termination of employment. Art. 24 of ESC requires States to protect the workers from arbitrary dismissal and ensures compensation. Art.30 of EU Charter also prohibits unjustified dismissal.

²⁵ See International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICMW) (1990).

²⁶ Social and economic rights are considered as aspirational only. See generally Maura Leen, *Human Rights, The Crisis and the Challenge*, 88 AN IRISH QUARTERLY REVIEW, No.350, 216-219 (Summer 1999). See also *supra* note 22 Asbjorn Eide at 110.

The civil and political rights can be secured through legislations that limit the State activities while positive action is required for realizing economic and social rights. The most radical view suggests that civil and political rights alone can be considered as rights in the true sense. The moderate view suggests that economic rights are genuine rights but not important as civil and political rights. The third view as advocated by UNO suggests that all the rights have equal status.²⁷ The Declaration on the Right to Development (1986) reaffirms that all human rights and freedoms are indivisible and interdependent.²⁸

There are certain human rights documents drafted at the auspices of UNO that recognize and promote the social security of migrant workers. The Universal Declaration of Human Rights (UDHR) (1948),²⁹ is the first step towards codification of human rights at the international level.

International Covenant on Civil and Political Rights (ICCPR) (1966),³⁰
International Covenant on Economic, Social and Cultural Rights (ICESCR)

²⁷ There was a conflict over the supremacy of rights due to certain political differences. The communist block argued for economic and social rights while the western liberal democracies argued for civil and political rights. They were separated in to two, to achieve agreement. *See supra* 24 note at 39-40 .

²⁸ Art. 6 (2) of the Declaration on the Right to Development (1986) states that “All human rights and fundamental freedoms are indivisible and interdependent. Equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights”.

²⁹ Hereinafter referred as UDHR. It is not a binding document. But it is the first step towards the codification of human rights at the international level. It includes civil, political, social, economic and cultural rights. The preamble of UDHR states that “The recognition of the inherent dignity and of equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”. UDHR has played a significant role in the protection of the rights of workers. *See also* DHARAM GHAI, DECENT WORK, OBJECTIVES AND STRATEGIES 8 (2006).

³⁰ Hereinafter referred as ICCPR. The General Assembly of UN adopted ICCPR in 1966. India ratified it on 10/4/1979 subject to the reservation on articles 1, 9, 13. The Optional Protocol of ICCPR entered in to force on 23 March 1976.

(1966),³¹ Convention on the Elimination of Discrimination against Women (CEDAW) (1979)³² and International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW) (1990)³³ do recognise social security rights. Though the treaties other than ICMW do not make an express mention of migrant workers, the antidiscrimination clauses in other treaties are interpreted to include migrant status within the ambit of its application.³⁴

Right to social security is a human right of migrant workers. The worker and family shall get social protection from contingencies like unemployment, sickness, invalidity, old age, maternity, death of bread winner, employment injury and the like.³⁵ Social security of migrant construction workers is a part

³¹ Hereinafter referred as ICESCR. ICESCR entered in to force on January 3, 1976. India ratified it on 10/4/1979 subject to the reservation on articles 1,4,7 (c) and 8. UNO adopted an Optional Protocol to the ICESCR in December 2008 which constituted the first international complaint mechanism independent of ILO for violations of economic and social rights. *See also supra* note 20 H .O. AGARWAL at 29. The UDHR, ICCPR and ICESCR and the two Optional Protocols formed the international bill of human rights that formed the basis for future human rights law.

³² Hereinafter referred as CEDAW. UN General Assembly adopted CEDAW on 18 December 1979. It entered into force on 3 September 1981 after the twentieth country had ratified it. The convention is the successor of the Declaration on Elimination of Discrimination against Women adopted on 7 November 1967. India ratified the convention on 9/7/1993 subject to reservation on articles 5 (a) ,16 (1), 16(2), 29 (1) .There is an Optional Protocol to CEDAW passed in the year 1999. The Convention was the result of more than thirty years of work by the UN Commission on the Status of Women (Mar.18, 2017), <http://www.un.org/womenwatch/daw/cedaw/cedaw.htm>.

³³ Hereinafter referred as ICMW.

³⁴ *See* Isabella Slinkx, *Migrant Rights in UN Human Rights Conventions*, in *MIGRATION AND HUMAN RIGHTS, THE UNITED NATIONS CONVENTION ON MIGRANT WORKERS RIGHTS* 128 (Ryszard Cholewinski, Paul De Guchteneire & Antoine Pecoud, ed., 2009). The treaty monitoring bodies consider migrant workers as vulnerable groups. Migrant status is added to classical grounds of discrimination such as race, colour, language, religion, political and other opinion, national or social origin, property, birth, age.

³⁵ *See* articles 22 & 25 of UDHR. *See also* articles 9, 10, 11 & 12 of ICESCR.

of their right to work. Right to work is a human right.³⁶ The right to work is very broad and encompasses certain allied rights in its ambit.³⁷ The work shall be free, voluntary and fair.³⁸ The remuneration must be adequate to lead a dignified life for himself and his family. There shall be sufficient rest and leisure.³⁹ Holidays must be given with remuneration otherwise holidays means starvation for workers. No considerations other than merit and seniority shall rule promotion.⁴⁰ There shall be opportunity for training, retraining and vocational guidance. The right to organize and the right to collective bargaining is a part of right to work⁴¹.

The human rights of the workers especially the human rights of the vulnerable groups like migrants are granted the least priority in this age.⁴² The migrant workers suffer various problems due to their departure from native place, differences in culture, custom and language etc.⁴³ The emigration process in India also involves grave human right exploitations.⁴⁴ India is one of

³⁶ See articles 23 & 24 of UDHR, art. 5 of International Convention on Elimination of all forms of Racial Discrimination (ICERD) (1965), art. 11 of CEDAW, articles 25&26 of ICMW, art. 27 of International Convention on the Rights of Persons with Disabilities (2006).

³⁷ See articles 22,23 24 & 25 of UDHR.

³⁸ See articles 6 & 7 of ICESCR.

³⁹ See art. 7 of ICESCR

⁴⁰ *Id.*

⁴¹ See art. 20 of UDHR. See also articles 21 & 22 of ICCPR.

⁴² The factors like poor data, gaps between different institutional mandates of the UNO, parallel systems of protecting employment rights and human rights, improper reporting procedure of human rights NGO, the dominance of refugee protection in the migration field etc are responsible for the slow recognition of migrants rights. See Nicola Piper, *Economic Migration and the Transnationalization of the Rights of Foreign Workers, A Concept Note*, in GLOBALIZATION AND LABOUR LAWS 96 (Nandini C.P. ed., 2007).

⁴³ See Paragraph 50 of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerances (2001).

⁴⁴ See S.IRUDAY RAJAN, M.J. VARGHESE & M. S. JAYAKUMAR, DREAMING MOBILITY AND BUYING VULNERABILITY, OVERSEAS RECRUITMENT PRACTICES IN INDIA 157 (2011).

the biggest labour exporting countries in the world today and it also receives the highest share of remittances from labour migration.

3.2. THE INTERNATIONAL CONVENTION ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES 1990 (ICMW)

ICMW requires special mention because it is the one and only convention of UNO that is exclusively meant for elaboration of human right standards of migrant workers and their family. It is the latest of the seven core international human rights treaties, which together form the U N human rights treaty system.⁴⁵ It is one of the lengthy conventions drafted by UNO.⁴⁶ The convention was adopted by the General assembly of UNO on 18th December 1990⁴⁷ and entered into force on 2003.⁴⁸ December 18th the day on which ICMW has adopted is declared as the International Migrant's day by the General Assembly in the year 2000.⁴⁹ ICMW defines of migrant worker in broad terms.⁵⁰

⁴⁵ The other six are the ICCPR (1966), ICESCR (1966), the International Convention on the Elimination of All Forms of Racial Discrimination(ICERD) (1966), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984),CEDAW (1979) and the Convention on the Rights of the Child (CRC) (1989).

⁴⁶ It is divided in to IX parts and contains 93 articles.

⁴⁷ Adopted by General Assembly Resolution 45/158.

⁴⁸ According to art. 87 of ICMW twenty ratifications were necessary for the Convention to enter in to force.

⁴⁹ G.A. Resolution 55/93 (4 Dec. 2000).

⁵⁰ The definition of migrant worker in the European Convention on the Legal Status of Migrant Workers (1977) is a restricted one. It exempts certain categories who are specifically included in UN Convention.

The ICMW is the culmination of many years of discussions, reports and recommendations on the subject of migrants' rights.⁵¹

According to article 2 of the ICMW

“Migrant worker is a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he is not national”.

Based on the nature of the work the migrant workers are classified in to different categories such as frontier worker, seasonal worker, seafarer, worker on an offshore installation, project tied worker, specified employment worker, self employed worker etc.⁵²

Part I deals with the scope and definitions while Part II deals with the principle of non discrimination.⁵³ It prohibits discrimination on working conditions the basis of migrant status.⁵⁴ Part III of the Convention elaborates the human rights that are available to all migrant workers and their families⁵⁵ irrespective of their documentation. Part IV of the Convention elaborates the

⁵¹ The UNO has first voiced its concern about the rights of migrant workers in 1972, when the Economic and Social Council, in its resolution 1706 (LIII) expressed its fear at the illegal transportation of labour to some European countries and at the exploitation of workers from some African countries “in conditions akin to slavery and forced labour.” See The High Commissioner of Human Rights, UN, *The International Convention on Migrant Workers and its Committee Fact Sheet No.24 (REV.1) 2* (2005) (Jan. 27, 2017), [www.ohchr.org/EN/Professional interest/ Pages/CMW.aspx](http://www.ohchr.org/EN/Professional%20interest/Pages/CMW.aspx). See also James. A. R, Nafziger & Barry. C. Bartelm, *The Migrant Workers Convention: Its Place in Human Rights Law*, 25 IMR.SPECIAL ISSUE: UN INTERNATIONAL CONVENTION ON THE PROTECTION ON THE RIGHTS OF ALL MIGRANT WORKERS AND THE MEMBERS OF THEIR FAMILIES, No.4, 772-774 (Winter 1991).

⁵² See art. 2 of ICMW.

⁵³ See art. 25 of ICMW.

⁵⁴ Art. 27 of ICMW provides for equality of working conditions and social security rights to all migrant workers. Migrant workers suffer more human right abuses because of their migrant status. See also Carl Skutsch, *Migrant Workers*, in HUMAN RIGHTS ENCYCLOPEDIA 800 (James. R. Lewis & Carl Skutsch ed., 2001).

⁵⁵ As per art. 4 of ICMW “Members of family refers to persons married to migrant workers or having them a relationship that produces the effects equivalent to marriage as per law and their dependent children and other dependent persons as per law or agreements”. Articles 8 to

additional rights that are available for migrant workers and their families who are in a regular situation.⁵⁶ Part V elaborates the provisions that are applicable to particular categories of workers such as frontier workers, seasonal workers etc and makes some modifications to the general rights conferred on them by Part III and Part IV of the Convention. Part VI explains the principles to be followed by the States for the promotion of sound, equitable, humane and lawful conditions for international migration.⁵⁷ Part VII deals with the implementation of Convention. There shall be a Committee on the Protection of the Right of all Migrant Workers and Members of their Families.⁵⁸ Part VIII explains the general provisions and Part IX deals with the final provisions. The rights guaranteed under the Convention cannot be renounced or derogated in any way.⁵⁹ The employment contracts are to be made in accordance with the provisions of the covenant. The important human rights mentioned in ICMW are described under for ready reference.

33 of the ICMW describes the rights that are available for all migrant workers and their families whether they are regular or irregular.

⁵⁶ See art.5 of ICMW.

For the purposes of the present Convention, migrant workers and members of their families: (a) Are considered as documented or in a regular situation if they are authorized to enter, to stay and to engage in a remunerated activity in the State of employment pursuant to the law of that State and to international agreements to which that State is a party; (b) Are considered as non-documented or in an irregular situation if they do not comply with the conditions provided for in subparagraph (a) of the present article.

Articles 37 to 56 of the ICMW describes the rights that are available for the regular migrants and their families.

⁵⁷ Articles 64 to 71 of ICMW provides for the obligations of the States to promote and maintain sound international migration

⁵⁸ Hereinafter referred to as CMW. On January 1, 2004, CMW was established which is the seventh UN human rights treaty monitoring body. See articles 72 to 77 of ICMW. The individual as well as the aggrieved State can file complaints subject to the provisions of the Convention.

⁵⁹ See art. 82 of ICMW.

Table No : 3.1

ARTICLES	RIGHT CONFERRED
Art. 8	Right to leave any State
Art. 9	Right to life
Art.10	Freedom from inhumane or degrading treatment
Art. 11	Freedom from slavery, servitude
Art.12	Freedom of thought, conscience and religion
Art. 13	Freedom of opinion
Art. 14	Right to privacy
Art. 15	Rights on property
Articles 16,17,18,19 & 20	Rights of migrants workers on arrest and detention
Articles 21, 22 & 23	Rights on expulsion
Art.24	Right to recognition as a person before law
Art. 25	Equal treatment in respect of remuneration and other working conditions
Art.26	Trade union rights
Art. 27	Social security rights
Art. 28	Right to emergency medical care
Articles 29 & 30	Rights of migrant children
Art. 31	Protection of cultural identity of migrants
Art. 32	Transfer of earnings and savings

The following rights are recognized for the migrant workers and their family who are in a regular status. These rights are in addition to the above mentioned rights.⁶⁰ The nations are free to impose reasonable restrictions in the enjoyment of these rights.

⁶⁰ Art.36 of ICMW.

Table No : 3.2

ARTICLES	RIGHT CONFERRED
Art. 37	Right to know the conditions of stay and work
Art. 38	Right to temporary absence
Art. 39	Liberty of movement and residence
Art. 40	Freedom of association
Articles 41 & 42	Political rights
Article 43, 54 & 55	Equality of treatment in social security rights
Articles 44 & 45	Protection of family of migrant workers
Articles 46 & 48	Equal treatment in duties of import-export, customs and taxes
Art. 47	Transfer of earnings
Articles 49, 50 & 56	Authorization of residence
Articles 52 & 53	Right to select remunerated activities

The rights of migrant workers under ICMW can be classified under social, cultural, civil and political rights.⁶¹ Almost all the rights covered by the international bill of rights are included in ICMW.

It codifies the rights available to the migrants under various international treaties in a broader aspect.⁶² Certain basic rights are made available for all migrant workers and some additional rights, which shows the predominant

⁶¹ See Faruk Sen & Sedef Koray, *Migrant Worker's Rights*, in HUMAN RIGHTS ; CONCEPT AND STANDARDS 327-337 (Janusz Symonides ed.,2000).

⁶² See Paragraph 6 of the General Comment No.2, on the Rights of Migrant Workers in an Irregular Situation and Members of their Families, CMW/C/GC/2 dated 28/8/2013.

The grounds of discrimination recognised under ICMW (1990) is broader than other human right treaties. The Convention also covers categories of migrant workers and self employed workers who are not covered by the major ILO documents. ICMW is the only one treaty consolidating a number of labour rights and applying them to migrant workers in its articles 25, 43, 45, 49, 51, 52,53and55. ICMW grants some specific rights like articles 21, 22, 23,31,32,33 and 34 that are not explicitly protected in other human rights treaties.

character of economic and social rights are conferred upon the regular workers. The special preference to regular workers shows that the Convention wants to promote regular migration. At the same time it is submitted that the undocumented workers cannot be differentiated in enjoyment of social security rights. They require more protection than regular workers. The irregularity of status is the result of many social and economic factors. They cannot be treated as offenders. They are the victims of marginalization. The ICMW consider migrants as well as their families. The workers are recognized as social entities. The Convention considers the problems of migrants from a human right perspective rather than a political or security issue.⁶³ Unfortunately it is not ratified by the major receiving countries.⁶⁴ India has not ratified it. Another important UN initiative to protect the rights of migrants is the Special Rapporteur on the Human Rights of Migrants appointed by UN Commission on Human Rights to monitor the problems of migrant workers. They submit reports to Human Rights Council on the basis of communication from individuals and official visits to selected countries.⁶⁵

⁶³ See Siby Tharakan, *Protecting Migrant Workers*, 37 EPW, No. 51, 5080, 5081(Dec. 20-27, 2002).

⁶⁴ See Khalid Koser, *Protecting Rights of Migrant Workers*, in *NEW PERSPECTIVES ON INTERNATIONAL MIGRATION AND DEVELOPMENT 99* (Jeronimo Cortina & Enrique O Choa – Reza ed., 2013).

⁶⁵ See *supra* note 7 at 116. See also High Commissioner for Human Rights, UN, *The International Convention on Migrant Workers and its Committee, Fact Sheet No 24*(Rev.1) 14(2005) (Jan. 27, 2017), www.ohchr.org/EN/Professionalinterest/Pages/CMW.aspx.

3.3. INTERNATIONAL LABOUR ORGANISATION (ILO) AND SOCIAL SECURITY OF MIGRANT WORKERS

The ILO was formed on the aftermath of world war I to protect the workers from the exploitation of unregulated capitalist economy. There was a growing unrest among the workers leading to radical political movement. ILO was established to secure international labour standards to the workers of the entire world. ILO has drafted various documents on the social security even before the inception of UNO. On December 14, 1946 ILO became the first specialized agency of UNO.⁶⁶ ILO has the duty to facilitate sound migration and to ensure the social security of workers.⁶⁷

It has the constitutional mandate to improve the labour standards and working conditions.⁶⁸ ILO documents on social security apply to all workers including migrant workers unless they are expressly excluded.⁶⁹ There are difference in rights of permanent migrants, temporary migrants and illegally resident migrants.⁷⁰

⁶⁶ See IAN BROWNLIE & GUY. S. GOODWIN-GILL, BASIC DOCUMENTS ON HUMAN RIGHTS 305 (2002). ILO became one of twelve specialized agencies UNO under arts 57 and 63 of the UN Charter.

⁶⁷ Part III of Declaration of Philadelphia (1944). The important functions of ILO includes prescription of labour standards, collection and dissemination of information and technical assistance to members. See N. VAIDYANATHAN, ILO CONVENTIONS AND INDIA 28 (1978).

⁶⁸ See the preamble of the Constitution of ILO (1919). See also art.1 of the Declaration Concerning the Aims and Purposes of ILO (1944). The preamble of the Declaration on Fundamental Principles and Rights at Work (1998) makes a special reference for the protection the rights of migrant workers .

⁶⁹ See ILO, INTERNATIONAL LABOUR MIGRATION, RIGHTS BASED APPROACH 120(2010).

⁷⁰ See RONALD SKELDON, MIGRATION AND DEVELOPMENT, A GLOBAL PERSPECTIVE 152 (1997).

ILO takes care of regular as well as irregular migrants.⁷¹

The Declaration on Fundamental Principles and Rights at Work (1998) states that by joining ILO and endorsing the principles of the constitution of ILO, the member States are bound by the core labour rights.⁷²

It was believed that the focus on core labour rights and its observance would be more effective to protect the rights of workers.⁷³

There are eight core conventions of ILO namely Equal Remuneration Convention (1951), Discrimination (Employment & Occupation) Convention (1958), Freedom of Association and Protection of Right to Organize Convention (1948), The Right to Organize and Collective Bargaining Convention (1949), Forced Labour Convention (1930), Abolition of Forced

⁷¹ The ILO uses the terms clandestine to refer to irregular movements and illegal to refer to undocumented employment. See the Migrant Worker (Supplementary Provision) Convention (1975) No.143. The abusive conditions of work further enhance their vulnerability. See Paul De Guchteneire & Antoine Pecoud, *Introduction : The UN convention on Migrant Worker's Rights, in MIGRATION AND HUMAN RIGHTS, THE UNITED NATIONS CONVENTION ON MIGRANT WORKERS RIGHTS 2* (Ryszard Cholewinski, Paul de Guchteneire & Antoine Pecoud ed., 2009). The irregular migrants are often employed in informal sectors where labour rights are not enforced. See also UNESCO, *UN Convention on Migrants Rights, Information Kit 19* (2005) (Nov.30, 2016), <http://unesdoc.unesco.org/images/0014/001435/143557e.pdf>.9.

⁷² The Declaration was designed to equip ILO to face the challenges of globalization. See STEVE HUGHES & NIGEL HAWOTH, *THE INTERNATIONAL LABOUR ORGANIZATION COMING IN FROM THE COLD* 47(2011).

⁷³ See DANIEL BERLINER, ANNE REGAN GREENLEAF, MILLILAKE, MARGARET LEVI, & JENNIFER NOVECK, *LABOUR STANDARDS IN INTERNATIONAL SUPPLY CHAINS, ALIGNING RIGHTS AND INCENTIVES* 51(2015).

Labour Convention(1957), Minimum Age Convention (1973) and Worst Forms of Child Labour Convention (1999).⁷⁴

The right to equality, freedom of association, freedom from forced labour and freedom from child labour are the core labour rights essential for the realization of social security of interstate migrant construction workers.

There are certain ILO documents that are specifically meant for migrant workers like Migration for Employment Convention (Revised) (1949)⁷⁵, Migration for Employment Recommendation (Revised) (1949)⁷⁶ and Protection of Migrant Workers (Under Developed Countries) Recommendation (1955).

The early 1970's clandestine migration, discrimination and xenophobia attracted the attention of international community. The Migrant Workers (Supplementary Provisions) Convention (1975) and Migrant Workers Recommendation (1975) are specially meant for securing equality of

⁷⁴ See of ILO Declaration on Fundamental Principles and Rights at Work (1998). Art.2 declares that

All Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely: (a) freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labour; (c) the effective abolition of child labour and (d) the elimination of discrimination in respect of employment and occupation.

⁷⁵ The 1949 Convention was framed to motivate and facilitate international migration of the surplus labour from Europe to other parts of the world. See also MARTIN RUHS, THE PRICE OF RIGHTS REGULATING INTERNATIONAL LABOUR MIGRATION 14 (2013).

⁷⁶ The model agreement provided under the Annex of Migration for Employment Recommendation (Revised) (1949) has provided guidelines for ILO members in designing their own bilateral treaties for regulating social security of labour migrants.

migrants.⁷⁷ The important social security conventions drafted by ILO that are applicable to migrants are Social Security (Minimum Standards) Convention (1952),⁷⁸ Equality of Treatment (Social Security) Convention (1962),⁷⁹ Maintenance of Social Security Rights Convention (1982)⁸⁰ and Social Protection Floors Recommendation (2012).⁸¹

India is a founder member of ILO and became a permanent member of ILO's governing body in 1922. In 1928, ILO opened a branch in Delhi. It was the first branch of ILO in Asia.⁸² India receives technical cooperation and

⁷⁷ See Michael Hasenau, *ILO Standards on Migrant Workers ; The Fundamentals of UN Convention and its Genesis*, 25 IMR SPECIAL ISSUE : UN INTERNATIONAL CONVENTION ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES, No.4, 687, 695 (Winter 1991). The 1975 Convention is the first international Convention that recognize the rights of irregular migrants. See generally Linda .S. Bosniak, *Human Rights, State Sovereignty and Protection of Undocumented Migrants under International Migrant Workers Convention*, 25 IMR. SPECIAL ISSUE : UN INTERNATIONAL CONVENTION ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES, No.4, 737-770 (Winter 1991). See also Natacha David, *Migration and Globalisation, Focus on Migrant Workers*, 5 IUR, No.4, 1,3 (1998). The irregular migrants are like slaves without money and visa.

⁷⁸ The Convention was adopted on June 28, 1952 and came in to force on April 27, 1955. "The 1952 Convention is regarded as the flagship of all ILO Social Security Conventions, as it is the only international instrument based on basic social security principles that establishes worldwide-agreed minimum standards for all nine branches of social security" (Jul. 8, 2017), www.ilo.org/secsoc/areas-of-work/legal-advice/WCMS-205340/lang--en/index.htm

⁷⁹ The Convention was adopted in June 28, 1962 and came in to force on April 25, 1964. According to art.3, each member State shall grant equal treatment to its nationals and migrants with regard to every branch of social security benefits in respect which it has accepted the obligations of the Convention.

⁸⁰ Maintenance of Social Security Rights Convention (1982) secures maintenance of rights in the course of acquisition and acquired rights in all branches of social security covered under Social Security (Minimum Standards) Convention (1952). The Convention was adopted in June 21, 1982 and came in to force on September 11 1986. The convention is followed by a Recommendation in the next year known as Maintenance of Social Security Rights Recommendation (1983) (No.167) (Jul. 5, 2017), <http://en.wikipedia.org/wiki/Maintenance-of-Social-Security-Rights-Convention-1982>.

⁸¹ According to art. 2, Part II of the Social Protection Floors Recommendation (2012) (No.202), social protection floors should comprise basic social security guarantees. There shall be access to essential goods and services and basic income security.

⁸² See Gerry Rodgers, *India, the ILO and the Quest for Social Justice Since 1919*, 46 EPW , No.10, 45, 46-52 (Mar. 5-Mar.11, 2011) .

assistance from ILO.⁸³ ILO Conventions have substantially influenced the Indian labour legislations.⁸⁴

Almost all the labour standards recognized by ILO are included in the provisions of Constitution and has incorporated in to various statutory and administrative measures.⁸⁵

3.4. SOCIAL SECURITY OF MIGRANT WORKERS UNDER HUMAN RIGHTS DOCUMENTS

Social security is a broad concept. One cannot confine its meaning to social protection alone. It includes all the rights that are essential for the development of workers and their family. Social security is an economic and social necessity for development and progress. It can play a significant role in the eradication of poverty and inequality.⁸⁶

Social security includes the protection offered to people in their vulnerable situations like illness, unemployment, old age, motherhood, childhood, death of bread winner etc.⁸⁷ There shall be access to essential goods

⁸³ See C.S.Venkata Retnam, *International Labour Standards and India* 41 IJLE, No.4, 993, 998 (1998).

⁸⁴ See PREETA JOSHI, *INTERNATIONAL LABOUR ORGANIZATION AND ITS IMPACT ON INDIA* 78 (1985).

⁸⁵ See N.MAHESWARA SWAMY, *IMPACT OF ILO STANDARDS ON INDIAN LABOUR LAW* 480-486 (2007).

⁸⁶ The preamble of Social Protection Floors Recommendation (2012).

⁸⁷ Paragraph 2 of General Comment No.19 of the Committee on Economic, Social and Cultural Rights, on the right to Social Security (art. 9), E/C.12/GC.19 dated 4/2/2008.

The right to social security encompasses the right to access and maintain benefits, whether in cash or in kind, without discrimination in order to secure protection inter alia from (a) lack of work related income caused by sickness, disability, maternity, employment injury, unemployment, old age or death of a family member (b) unaffordable access to health care (c) insufficient family support, particularly for children and adult dependents.

and services and basic income security.⁸⁸ Social security is essential for the achievement of decent work.⁸⁹

The international documents like UDHR (1948), ICESCR (1966), Protection of Migrant Workers (Under Developed Countries) Recommendation (1955) and Maintenance of Social Security Rights Convention (1982) recognize the right to social security.

Table No : 3.3

NAME OF THE DOCUMENT	ARTICLE	RIGHT GUARANTEED
UDHR (1948)	Articles 22, 25	Right to social security, Right to security in the event of unemployment, sickness, disability, widowhood etc
ICESCR (1966)	Art.9	Right to social security, social insurance
Protection of Migrant Workers (Under Developed Countries) Recommendation (1955)	Articles 45 and 46	Equal social security benefits, industrial safety and hygiene for migrant workers
Maintenance of Social Security Rights Convention (1982)	Articles 6 & 7	The periods of insurance, employment, occupational activity or residence completed under the legislations of the member States shall be added together for participation in insurance scheme or

⁸⁸ See art. 2, Part II of the Social Protection Floors Recommendation (2012).

⁸⁹ Achievement of decent work for all is one of the millennium development goal of ILO (Dec.5,2017), <http://www.ilo.org/global/topics/millennium-development-goals/lang-en/index.htm>.

		maintenance of rights or for calculation of benefits
Social Security (Minimum Standards) Convention(1952)	Articles 7 to 64.	Medical benefit, sickness benefit, unemployment benefit, old age benefit, employment injury benefit, family benefit, maternity benefit, invalidity benefit and survivors benefit

From the table it can be seen that the international documents recognizes the right to social security as a human right and describes the specific vulnerabilities which require state protection. Social assistance is also a human right and it implies that State has to provide benefits to the workers in a noncontributory manner. It is not possible to expect periodical remittance from interstate migrant construction workers to various welfare schemes. There shall be maintenance of social security rights. The interstate migrant workers have no maintenance of social benefits. They lose their entitlements while migrate to Kerala for their livelihood which is a negation of their human rights. Since many of the labour legislations providing for social security requires nationality as a precondition ,the international labour migrants do not get the all the social security benefits in the place of employment. They are devoid of benefits provided by the social security legislations in the home States because they could not fulfill the criteria of residence. There shall be transnationalisation of the rights of migrant workers.⁹⁰

⁹⁰ See *supra* note 42 at 103 .The migrants shall be able to preserve their rights while leaving the home place, entering place of employment and on returning. See *also supra* note 69 at 126-127.

Committee on Migrant Workers observes that social security rights should not be affected by a change in work place.⁹¹ The migrant workers irrespective of their status shall get benefit from noncontributory benefits also.⁹² The Committee considers that in case of extreme poverty and vulnerability, State parties shall provide emergency social assistance to irregular migrant workers including emergency services for persons with disabilities.⁹³

There are certain international conventions and recommendation that guarantee specific social security rights to workers including interstate migrant construction workers.

3.4.1. Unemployment benefit and interstate migrant construction workers

“Unemployment benefits schemes helps to provide income security, prevent poverty, support structural changes in the economy and provide safeguards against informalisation”.⁹⁴

Workers shall get unemployment benefits and protection for sufficient period.⁹⁵ The documents like UDHR (1948), Migrant Workers Recommendation (1975) and Social Security (Minimum Standards)

⁹¹ See Paragraph 69 of the General Comment No.2 of the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, on the Rights of Migrant Workers in an Irregular Situation and Members of their Families, CMW/C/GC/2 dated 28/8/2013.

⁹² See Paragraph 70 of the General Comment No.2 of the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, on the Rights of Migrant Workers in an Irregular Situation and Members of their Families, CMW/C/GC/2 dated 28/8/2013.

⁹³ See Paragraph 71 of the General Comment No.2 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, on the Rights of Migrant Workers in an Irregular Situation and Members of their Families, CMW/C/GC/2 dated 28/8/2013.

⁹⁴ ILO, World Social Protection Report 29 (2014-2015).

⁹⁵ See Paragraph 16 of the General Comment No.19 of the Committee on Economic, Social and Cultural Rights, on the Right to Social Security (art. 9), E/C.12/GC.19 dated 4/2/2008.

Convention (1952) provide for unemployment benefits.⁹⁶ If the dismissal is without sufficient reason there shall be provisions for reinstatement, compensation for loss of wages, or other payment, right to indemnification or access to a new employment. The migrant workers shall get equal treatment in unemployment benefits.

Table No : 3.4

NAME OF THE DOCUMENT	ARTICLE	RIGHT GUARANTEED
UDHR (1948)	Art. 25	Unemployment benefit
Social Security (Minimum Standards) Convention (1952) ILO	Articles 19 to 24	Unemployment benefit
Migrant Workers Recommendation (1975) ILO	Art. 32	Reinstatement, compensation for loss of wages, right to indemnification or access to a new job for unjustified dismissal
Employment Promotion and Protection Against Unemployment Convention (1988) ILO	Articles 10, 13 to 25	Unemployment benefits

The migrant workers are more susceptible to the booms and slumps in the labour market.⁹⁷ They are always the victims of economic crisis. Large number of migrant construction workers lost their employment and forced to

⁹⁶ See also Unemployment Convention (1919) (ILO) and Termination of Employment Convention (1982) (ILO).

⁹⁷ See Jeremy Eades, *The Political Economy of Migration, Pakistan, Britain and Middle East*, in *MIGRANTS, WORKERS AND SOCIAL ORDER* 17 (Jeremy Eades ed., 1987).

leave Kerala with empty hands after demonetization policy of Central Government during November 2016. They have no security of employment. They may lose their employment due to absence from work, prolonged illness, displeasure of employers or contractor, or market fluctuations. A resident worker may not lose his employment in an arbitrary manner. There are many forums available for local workers to protect their rights .But the interstate migrant construction workers are helpless on their unemployment. It will lead to starvation of their family. So State has a duty to guard migrants on their unemployment.

3.4.2. Sickness benefits and interstate migrant construction workers

When persons are unable to work due to sickness, cash benefits should be given to meet expenses.⁹⁸ State shall provide sufficient care to fight against endemic and epidemic diseases.⁹⁹ UDHR (1948), Social Security (Minimum Standards) Convention (1952), Medical Care and Sickness Benefit Convention (1969) ILO etc. deal with sickness benefit.¹⁰⁰

Table No : 3.5

NAME OF THE DOCUMENT	ARTICLE	RIGHT GUARANTEED
UDHR (1948)	Art. 25	Sickness benefits

⁹⁸ See Paragraph 14 of General Comment No.19 of the Committee on Economic, Social and Cultural Rights, on the Right to Social Security (art. 9), E/C.12/GC.19 dated 4/2/2008.

⁹⁹ See Paragraph 13 of the General Comment No.19 of the Committee on Economic, Social and Cultural Rights, on the Right to Social Security (art. 9), E/C.12/GC.19 dated 4/2/2008. Right to social security assumes more significance in the context of endemic diseases like HIV/AIDS, tuberculosis and malaria.

¹⁰⁰ See also ILO's Workmen's Compensation (Occupational Diseases) Convention (1934), Employment Injury Benefits Convention (1964) and Old Age, Invalidity and Sickness Benefit Convention (1967).

Social Security (Minimum Standards) Convention (1952) ILO	Articles 13 to 18	Sickness benefit
Medical Care and Sickness Benefit Convention(1969) ILO	Articles 18 to 26	Sickness benefit

In health care, the States consider migrants as secondary citizens.¹⁰¹ The expenses of a migrant construction worker increases on his sickness. He may lose his work contract. He has to find out income for the medical treatment and maintenance his family. Employer has the duty to conduct periodic medical checkup for the workers. The employer and the contractor are reluctant to meet the medical expenses of migrant construction worker.

3.4.3. Old age benefits and interstate migrant construction workers

The right to income security in old age includes the right to adequate social security pension.¹⁰² The return migration without sufficient savings has social and economic implications in the native place.¹⁰³ According to the Committee on Economic, Social and Cultural Rights, the old age benefits shall be made available on the basis of available resources.

¹⁰¹ See Phillip Cole, *Human Rights and the National Interest; Migrants Health Care and Social Justice*, 33 JOURNAL OF MEDICAL ETHICS, No.5, 269, 272 (May 2007). The author criticizes the discriminatory treatment followed by the U.K Government in health care towards migrant workers.

¹⁰² See ILO, World Social Protection Report 73 (2014-2015).

¹⁰³ See generally, Shanti Nair, *Migrants in a Maelstorm*, 54 THE WORLD TODAY, No 3, 66, 68 (Mar.1998).

Non contributory schemes shall be introduced for aged population who are unable to contribute to the scheme.¹⁰⁴ The human rights documents like UDHR, Migration for Employment Convention (Revised) (1949), Social Security (Minimum Standards) Convention (1952), Old Age, Invalidity and Sickness Benefit Convention(1967) etc provide for protection at old age.¹⁰⁵

Table No : 3.6

NAME OF THE DOCUMENT	ARTICLE	RIGHT GUARANTEED
UDHR (1948)	Art. 25	Old age benefit.
Migration for Employment Convention (Revised) (1949) ILO	Art. 6	Normal pension to migrant workers as noncontributory benefits.
Social Security (Minimum Standards) Convention (1952) ILO	Articles 25 to 30	Old age benefits and maintenance of acquired rights.
Old Age, Invalidity and Sickness Benefit Convention (1967) ILO	Articles 15 to 18	Old Age benefits

¹⁰⁴ Paragraph 15 of the General Comment No.19 of the Committee on Economic, Social and Cultural Rights, on the Right to Social Security (art. 9), E/C.12/GC.19 dated 4/2/2008 states that the old age benefits are an essential component of social security. The retirement age should be fixed on the basis of national conditions, nature of work, working capacity of the aged persons etc. Old age benefits shall be provided on the basis of resources of the State.

¹⁰⁵ See art.25 of UDHR. See also Maintenance of Migrant's Pension Rights Convention (1935).

Every one requires special care and protection at old age. The social security measures shall include old age benefits. Due to poor health care, malnutrition and the absence of occupational safety mechanisms, interstate migrant construction workers lose their health very early in their life. They are unable to earn their living at their old age. They may not have any assets or savings for their support. The old age benefits in the form of monetary pension or health care or other entitlements are necessary for interstate migrant construction workers to lead a dignified life.

3.4.4. Employment injury benefits and interstate migrant construction workers

According to the Committee on Economic, Social and Cultural Rights, prevention of occupational accidents and disease is essential for the realisation of the highest attainable level of physical and mental health.¹⁰⁶ State shall assure assistance on employment injury. According to Social Security (Minimum Standards) Convention (1952),

“Employment injury includes any condition that impacts negatively on health and which is due to a work accident or an occupational disease, and the incapacity to work and earn that results from it, whether temporary or permanent, total or partial.”¹⁰⁷

¹⁰⁶ See Paragraph 25 of the General Comment No. 23 of Committee on Economic, Social and Cultural Rights, on the Right to Just and Favourable Conditions of Work, art.7 of ICESCR, E/C.12/GC 23 dated 27/4/ 2016.

¹⁰⁷ See Part VI of Social Security (Minimum Standards) Convention (1952). See also Paragraph 17 of the General Comment No.19 of the Committee on Economic, Social and Cultural Rights, on the Right to Social Security (art. 9), E/C.12/GC 19 dated 4/2/2008.

Articles 31 to 38 deal with employment injury benefits. It includes access to essential medicines, hospitalization, general medical care and specialist care.¹⁰⁸

Table No : 3.7

NAME OF THE DOCUMENT	ARTICLE	RIGHT GUARANTEED
Social Security (Minimum Standards) Convention (1952) ILO	Articles 31 to 38	Employment injury benefits
Employment Injury Benefits Convention (1964) ILO	Articles 9, 10 to 12 Art. 13	Medical care Cash benefits

Construction work is a hazardous occupation. The employers and the contractors are negligent in providing adequate safety mechanism for migrant construction workers. The employers try to maximize their profits at any cost. If the labour inspections are not effective the worker will suffer. The employment injury may leads to the loss of his health, employment or ultimately causes the death. A welfare State has to take care of the migrant workers and their family who met with an employment injury. Benefits shall include cash benefits or hospitalization.

¹⁰⁸ ILO has drafted Employment Injury Benefits Convention (1964), Workmen's Compensation (Accidents) Convention (1925), Equality of Treatment (Accidents Compensation) Convention (1925) etc. to provide employment injury benefits.

3.4.5. Disability benefits and interstate migrant construction workers

Social security requires protection on disability.¹⁰⁹ Part IX of Social Security (Minimum Standards) Convention (1952) deals with invalidity benefit.¹¹⁰ The Convention on the Rights of Persons with Disabilities (2006) (CPRD) ensures the right of disabled persons to work in an equal footing with that of other persons.¹¹¹

According to ILO,

“Effective measures to support persons with disabilities in finding and retaining quality employment are a key element of non-discriminatory and inclusive policies that help to realize their rights and aspirations as productive members of society.”¹¹²

Table No : 3.8

NAME OF THE DOCUMENT	ARTICLE	RIGHT GUARANTEED
Social Security (Minimum Standards) Convention (1952) ILO	Articles 53 to 58	Invalidity benefit
(CRPD) (2006)	Articles 27 & 28	Protection on disability
The Invalidity, Old age and Survivors Benefits Convention (1967) ILO	Articles 10 & 11	Invalidity benefit

¹⁰⁹ See Paragraph 20 of the General Comment No.19 of the Committee on Economic, Social and Cultural Rights, on the Right to Social Security (art. 9), E/C.12/GC.19 dated 4/2/2008. See also art. 25 of UDHR.

¹¹⁰ See Vocational Rehabilitation and Employment (Disabled Persons) Convention (1983).

¹¹¹ Hereinafter referred as CPRD. See Art. 27 of CPRD states that the worker shall not be discriminated on the ground of disability. The rights of disabled includes equal access to the labour market, free choice of employment, protection from discrimination, just and favourable conditions of work, trade union rights, safety, opportunities for self-employment, entrepreneurship, the development of cooperatives and starting one's own business, training programmes, freedom from forced labour and so on. Art.27 protects the social protection of disabled persons.

¹¹² ILO, World Social Protection Report 53 (2014-2015).

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It is not easy for a migrant construction worker to meet both the ends of his life. He has to work hard in adverse conditions. His vulnerability will be exacerbated by his disability. The disability may arise from an accident at workplace or otherwise. The disabled persons shall get social assistance for rehabilitation and maintenance of their family. There shall be effective reporting of accidents and their monitoring by the authorities. Now the disabled migrant workers are forced to return to their home States because there is nobody to take care of them in Kerala. They lack disability or invalidity benefits.

3.4.6. Survivors benefits and interstate migrant construction workers

The survivors are entitled to social security benefits on the death of a worker.¹¹³ Part X of the Social Security (Minimum Standards) Convention (1952) articles 59 to 64 deals with survivors benefit.

¹¹³ Paragraph 21 of the General Comment No.19 of the Committee on Economic, Social and Cultural Rights, on the Right to Social Security (art. 9), E/C.12/GC.19 dated 4/2/2008.

Benefits should cover funeral costs. Survivors or orphans must not be excluded from social security schemes on the basis of prohibited grounds of discrimination and they shall get assistance in assessing social security schemes particularly when endemic diseases such as HIV/AIDS, tuberculosis and malaria leave large number of children or older persons without family & community support.

See also art.25 of UDHR.

Table No : 3.9

NAME OF THE DOCUMENT	ARTICLE	RIGHT GUARANTEED
Social Security (Minimum Standards) Convention (1952) ILO	Articles 59 to 64	Survivors benefits
The Invalidity, Old age and Survivors Benefits Convention (1967) ILO	Articles 21 to 24	Survivors Benefits
Medical care and Sickness Benefits Convention (1969) ILO	Art. 27	Survivors Benefits

The specific convention namely ICMW, do not contain provisions for survivor benefits. Considerable number of migrants loses their life in suspicious circumstances at the place of employment. The culprits are seldom brought before the law. Besides malnutrition, lack of proper health care and employment injury claim the lives of several migrant construction workers. Usually the workers are devoid of any movable or immovable property at their home place. They have migrated to Kerala due to their extreme social and economic backwardness. The death of the earning member leads to destitution of the family. The dependants shall get benefits whether or not the death has occurred in the course of work. Survivors benefits are the minimum requirements of social protection in a welfare State like Kerala.

3.4.7. Family benefit and interstate migrant construction workers

The family as a fundamental unit of the society shall get social protection from unforeseen contingencies.¹¹⁴ Article 10 of ICESCR (1966) and Part VII of Social Security (Minimum Standards) Convention (1952) recognizes the importance of family. ICMW is the only international convention that recognizes the rights of the family of migrant workers. The migrant family faces various issues due to scattering. Their condition is not satisfactory at the place of employment and at the home State.¹¹⁵

Family benefits includes protection of children, educational scholarships, meeting of marriage expenses, provision for purchases of land and house hold appliances, financial credits, health care etc.

Table : 3.10

NAME OF THE DOCUMENT	ARTICLE	RIGHT GUARANTEED
ICESCR (1966)	Art.10	Family is the natural and fundamental unit of society
Social Security (Minimum Standards) Convention (1952) ILO	Articles 39 to 45	Family benefit
Maintenance of Social Security Rights	Art. 14	Social services to assist the needy people like migrant

¹¹⁴ Paragraph 18 of the General Comment No.19 of the Committee on Economic, Social and Cultural Rights, on the Right to Social Security (art. 9), E/C.12/GC.19 dated 4/2/2008. Family and child support include the provisions for cash benefits, food, clothing, housing, water, sanitation and other rights.

¹¹⁵ The preamble of the ICMW (1990) explains the vulnerability of the family of migrant workers.

Convention (1982) ILO		workers to promote their personal and family welfare
ICMW (1990)	Articles 38, 44, 47	Permission for temporary absence of migrant workers to meet their family, unification of the family, transfer their earning and savings to the support of their families

The status of a migrant worker depends on the status of his family .One of the major objectives of migration of labour is the improvement of the family. Family is the basic unit of society and State. Protection of family is essential for the social and economic advancement of State. So the social protection schemes shall give appropriate consideration to the family of a worker.

3.4.8. Medical benefit and interstate migrant construction workers

Migrants experience certain constraints in their health care.¹¹⁶ Right to health includes development of child, improvement of hygiene, control and prevention of epidemic, endemic, occupational and other diseases, access to medical care, timely health care, participation in health related decision making, access to safe and potable water, adequate sanitation, adequate supply

¹¹⁶ See Smitha Pillai, *Political Exclusion of Domestic Migrant Labourers in Kerala*, 2 JOURNAL OF SOCIAL DISCOURSE, No.2, 121, 125 (Apr.2015–Sept.2015).The health care of interstate migrants are not effective due to high cost of private health care, conflicting timing of work and availability of medical practitioners, fear of losing wages, problems of transportation and language constraints.

of safe food, nutrition and housing, healthy occupational and environmental conditions and access to health related education and information.¹¹⁷

Article 10 of Social Security (Minimum Standards) Convention (1952) lays down that medical benefit includes general practitioner care, specialist care at hospitals for in-patients and out-patients, essential pharmaceutical supplies and maternal care. Article 28 of ICMW (1990) lays down that migrant workers and members of their families including the irregular workers shall have the equal right to receive emergency medical care.¹¹⁸ The migrant children shall have access to essential medicines and immunization.¹¹⁹ The human right documents like UDHR (1948), ICESCR (1966), CEDAW (1979), Migration for Employment Convention (Revised) (1949), Migrant Workers Recommendation (1975) etc provide for the protection of right to health.¹²⁰

Table No : 3.11

¹¹⁷ Paragraph 11 of the General Comment No.14 of the Committee on Economic, Social and Cultural Rights, on Substantive Issues arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights, E/C.12/2000/4 dated 11/8/2000.

¹¹⁸ Art. 28 of the ICMW states that the State shall not discriminate migrant workers in providing urgent medical care for the preservation of their life or their health.

¹¹⁹ See Paragraphs 72 & 73 of the General Comment No.2 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, on the Rights of Migrant Workers in an Irregular Situation and Members of their Families, CMW/C/GC/2 dated 28/8/2013.

¹²⁰ The movement towards the recognition of right to health started from the movement to prevent spread of communicable diseases. Art.23 (f) of League of Nations established its Health Organ. WHO was established in 1946. See *supra* note 22 Asbjorn Eide at 117. See also ILO's Occupational Safety and Health Convention (1981), Occupational Health Services Convention (1985), Working Environment (Air Pollution, Noise and Vibration) Convention (1977), Safety Provisions (Building) Convention (1937) and Safety and Health in Construction Convention (1988).

NAME OF THE DOCUMENT	ARTICLE	RIGHT GUARANTEED
UDHR (1948)	Art. 25	Right to health
ICESCR (1966)	Articles 6 & 7	Right to fair conditions of work
ICESCR (1966)	Art. 12	Right to physical and mental health, reduction of still birth rate and infant mortality
CEDAW (1979)	Art. 12	Adequate nutrition during pregnancy and lactation, health care services including family planning
CRC (1989)	Art. 24	Health of child, facilities of treatment, rehabilitation
ICMW (1990)	Art. 28	Equal right to emergency medical care
Migration for Employment Convention (Revised) (1949) ILO	Articles 5 & 7	Medical inspections shall be made at the time of departure, journey and on arrival at the place of destination Free public services to migrants
Social Security (Minimum Standards) Convention (1952)	Articles 7 to 12	Medical benefit
Migrant Workers Recommendation (1975) ILO	Articles 20 to 22	Protection of health of migrant workers
ILO Medical Care	Articles	Medical Care

Recommendation (1944)	19 to 45	
Medical Care and Sickness Benefits Convention (1969)	Articles 8 to 17	Medical Care

Right to health and medical care is an essential component of right to social security of a migrant construction worker. The factors like low wages, climate changes, lack of access to fresh water and food, low sanitary condition, poor working conditions, absence of hygienic accommodation, vulnerability to communicable diseases, occupational diseases, accidents at workplace etc prejudicially affect the health of migrant workers. The process of globalization and privatization has increased the cost of medical care in an unreasonable way. Medical care from private institutions is not affordable for poor workers. They are denied of the benefits of public health care system due to technical reasons like absence of ration cards, proper identity documents, language constraints etc. State shall provide free medical aid to migrant construction workers by relaxing the administrative procedures.

3.4.9. Maternity benefit and interstate migrant construction workers

Maternity care ensures income security for pregnant women and mothers. It guarantees access to quality maternal health care and promotes

gender equality.¹²¹ ICESCR (1966) states that working mothers should be given paid leave or leave with adequate social security benefits during a reasonable period before and after child birth.¹²² Migrant women shall get appropriate prenatal and post natal health care, safe reproductive health services and emergency obstetric care.¹²³ CEDAW (1979), prohibits any discrimination based on pregnancy, child birth or marriage of a woman.¹²⁴

The Social Security (Minimum Standards) Convention (1952) requires that maternity care shall include pre-natal, confinement and post-natal care .It shall enable the women to restore her health, ability to work and to attend to her personal needs.¹²⁵

Table No : 3.12

NAME OF THE DOCUMENT	ARTICLE	RIGHT GUARANTEED
ICESCR (1966)	Art. 10	Protection of motherhood

¹²¹ See ILO, World Social Protection Report 60 (2014-2015).

¹²² Art.10 of ICESCR.

¹²³ Paragraph 72 of the General Comment No.2 of the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, on the Rights of Migrant Workers in an Irregular Situation and Members of their Families, CMW/C/GC/2 dated 28/8/2013.

¹²⁴ According to art.11 of CEDAW,

State shall introduce maternity leave with pay or comparable social benefits without loss of former employment, seniority or social allowances. State shall encourage provision of necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life through promoting the establishment and development of a network of child care facilities. Women should be granted special protection during pregnancy in types of work proved to be harmful to them.

¹²⁵ Art.49 of the Social Security (Minimum Standards) Convention (1952). See also Maternity Protection Convention (2000).

Social Security (Minimum Standards) Convention (1952) ILO	Articles 46 to 52	Maternity benefit
CEDAW (1979)	Art. 11	Leave with pay
Maternity Protection Convention (2000) ILO	Art. 3 Art.4 Art. 5 Art. 6 Articles 8-9 Art.10	Health care Maternity leave Leave in illness Cash benefits Protection from discrimination Rights of breast feeding mothers

CEDAW (1979) and ILO's Maternity Protection Convention (2000) give elaborate guidelines for maternity benefits. Maternal benefits shall consist of leave during pregnancy and motherhood, paid leave, nursing care and health care. It is an aspect of social security, human dignity and gender equality. Migrant women construction workers do not receive the requisite social care in their pregnancy and maternity due to their poverty and informal nature of work. The lack of maternity care badly affect the health of migrant women and children.

3.5. SOCIAL SECURITY AND ALLIED RIGHTS

It is not possible to realize social security as a distinct human right.¹²⁶ It is inextricably connected to other human rights like right to equality, right to

¹²⁶ See *supra* note 75 at 13. The key features of human rights are its universality, indivisibility, equality and inalienability.

life, right to work, right to good conditions of work, collective bargaining, right to standard of living, right to health, freedom from compulsory labour, freedom from child labour and so on.

3.5 .1. Equality of Treatment and migrant construction workers

The human rights documents promise equal treatment and protection from discrimination.¹²⁷ Social and economic equality cannot be achieved if there is discrimination among people.¹²⁸ The State shall not discriminate people in offering social protection.¹²⁹

3.5 .1 .1 Discrimination

Discrimination demoralizes and demotivates the workers.¹³⁰ According to Committee on Migrant Workers, the principle of non-discrimination is the foundation of all international human rights documents and to the UN Charter. ICMW recognizes the principle of nondiscrimination between migrant workers and other workers. It provides for equality of treatment in working conditions and social security rights.

¹²⁷ Art. 24 of the Vienna Declaration and Programme of Action (1993) says that “Great importance must be given to the promotion and protection of human rights of vulnerable groups like migrant workers, the elimination of all forms of discrimination against them and the strengthening and more effective implementation of existing human rights instruments.” See also art. 2 of UDHR, art. 2 of ICCPR and art. 2 of ICESCR.

¹²⁸ See Paragraph 1 of General Comment No. 20 of the Committee on Economic, Social and Cultural Rights, on Non-discrimination in Economic, Social and Cultural Rights, art. 2 Para.2 of ICESCR, E/C-12/GC-20 dated 2/7/2009.

¹²⁹ See Paragraph 9 of the General Comment No.19 of the Committee on Economic, Social and Cultural Rights, on the Right to Social Security (art. 9), E/C.12/GC.19 dated 4/2/2008. “Social security includes protection from arbitrary interference on existing social coverage. It requires equal treatment in protection from contingencies.”

¹³⁰ See *supra* note 11 Werner Sengenberger at 339.

There shall not be any kind of de jure or de facto discrimination among workers.¹³¹ The migrant workers are entitled to all the rights mentioned in UDHR, ICCPR and ICESCR without any discrimination.¹³² ICMW (1990) contain various provisions to secure the equal treatment of migrants.¹³³ Article 25 of the ICMW requires that there shall not be any discrimination between migrant workers and other workers with respect to remuneration, overtime, hours of work, weekly rest, holidays with pay, safety, health, termination of the employment relationship, minimum age of employment, restriction on work.¹³⁴ The regular migrant workers and their family are entitled to equality of treatment with nationals in matters like access to educational institutions, vocational guidance training and retraining, social services, health services, co-operatives; self managed enterprises and placement services.¹³⁵

¹³¹ “States parties shall respect the prohibition of discrimination by ensuring that their laws, regulations and administrative practices do not discriminate against migrant workers and members of their families.” See Paragraphs 18, 19 and 20 of General Comment No.2 of the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, on the Rights of Migrant Workers in an Irregular Situation and Members of their Families, CMW/C/GC/2 dated 28/8/2013. See also Paragraph 30 of the General Comment No. 20 of the Committee on Economic, Social and Cultural Rights, on Non Discrimination in Economic, Social and Cultural Rights art. 2 Para.2 of ICESCR, E/C-12/GC-20 dated 2/7/2009 and Paragraph 13 of the General Comment No. 18 of the Human Rights Committee on Non Discrimination, HRI/GEN/1/Rev.9, Vol.I, dated 10/11/1989.

¹³² See articles 1, 2 &7 of UDHR, articles 2&26 of ICCPR and articles 2 & 3of ICESCR. See also Paragraph 30 of the General Comment No.20 of UN Committee on Economic Social and Cultural Rights, on art.2 Para.2 of ICESCR, E/C-12/GC-20 dated 2/7/2009. “The covenant rights apply to everyone including non nationals, such as refugees, asylum seekers, Stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation.”

¹³³ Articles 25, 54 & 55 of ICMW.

¹³⁴ Art. 7 states that the rights guaranteed in ICMW are available to all migrants without any differentiation on grounds such as sex, ethnic or social origin, colour, language, religion or conviction, property, political or other opinion, age, nationality, economic position, marital status, race, birth or other status.

¹³⁵ Articles 43 & 45 of ICMW.

ILO documents like Social Security (Minimum Standards) Convention (1952) and the Discrimination (Employment & Occupation) Convention (1958)¹³⁶ prohibit discrimination. According to ILO, continued discriminatory treatment against migrant workers lead to unemployment, poverty, formation of ethnic ghettos, low educational levels, lower pay, discrimination in housing and education and other related unfavourable social conditions.¹³⁷ Migration for Employment Convention (Revised) (1949)¹³⁸, the Protection of Migrant Workers (Under Developed Countries) Recommendation (1955), Migrant Workers (Supplementary Provisions) Convention (1975), Migrant Workers Recommendation (1975) and Equality of Treatment (Social Security) Convention (1962) provides for equality of treatment in social security benefits.

¹³⁶ It is one of the core conventions of ILO. It was adopted by the General Conference of the ILO on 25 June 1958 and entered into force on 15 June 1960. India ratified the Convention on 3/6/1960. According to art. 1,

Discrimination means any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment or employment on occupation. It includes such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.

The Discrimination (Employment and Occupation) Recommendation (1958) provides the principles to be followed while formulating the national policy for prevention of discrimination in employment and occupation.

¹³⁷ See *supra* note 69 at 80-81.

¹³⁸ It is the first ILO Convention to guarantee the right of equality of treatment of migrants with nationals in matters of remuneration and employment. See *supra* note 75.

Table No : 3.13

NAME OF THE DOCUMENT	ARTICLE	RIGHT GUARANTEED
UDHR (1948)	Art.1 Art. 2 Art.7	Equal right of human beings Freedom from discrimination Equality before law and equal protection of law
ICCPR (1966)	Art. 2 Art.26	Freedom from discrimination Equality before law and equal protection of law
ICESCR (1966)	Art. 2	Freedom from discrimination
ICMW(1990)	Art. 7 Art. 25 Art. 27 Art. 55 Art. 54 Art. 28 Art. 48 Articles 43 & 45	Freedom from discrimination Equality in working conditions Equal treatment in social security legislations Equality of treatment in respect of remunerated activity Equality of treatment in respect of protection against dismissal, unemployment benefit, access to public work schemes and access to alternative employment in the event of the loss of work. Equality of treatment in respect of emergency medical care Equality of treatment in respect of taxation Equality of treatment in access to vocational guidance, training, housing, health services

ICERD (1966)	Art. 5	Equal treatment in social security rights
The Migration for Employment Convention (Revised) (1949) ILO	Art. 6	Equal working conditions for migrant workers and resident workers
Protection of Migrant Workers (Under Developed Countries) Recommendation (1955). ILO	Articles 45 and 46	Equality in social security benefits, industrial safety and hygiene for migrant workers
Migrant Workers (Supplementary Provisions) Convention (1975) ILO	Art.10	Equality of treatment in matters of social security benefits
Migrant Workers Recommendation (1975) ILO	Art. 2 Articles 23 to 29	Equality of treatment in working conditions Equal access and equal opportunity for availing social services
Equality of Treatment (Social Security) Convention (1962) ILO	Art. 3	Equality of treatment in matters of social security among nationals and non-nationals if both the countries have ratified the same branch of social security.
Social Security (Minimum Standards) Convention (1952) ILO	Art.68	Equality of treatment of nationals and non nationals
The Discrimination (Employment & Occupation) Convention (1958) ILO	Art. 2	Equal treatment and opportunity in respect of employment and occupation

If the public are made aware of the contribution of migrants to the development of society, the discrimination, xenophobia and intolerance practiced on them can be reduced to a considerable extent.¹³⁹ Discrimination against migrants can be abolished only through social integration.¹⁴⁰ The migrant workers are not recognised as partner in production. They are always demoralized as people who make disturbance in the society.¹⁴¹ When some workers are subjected to discrimination, it means that they are excluded from certain activities. It reduces the utilization of human resources and retards economic growth. There shall not be any discrimination among resident workers and the migrant workers in social security rights.

3. 5 .1 .2. Gender Equality

In earlier days, the majority of the migrants were men.¹⁴² Now women also migrate as their own due to many reasons.¹⁴³ Gender Discrimination

¹³⁹ See Report of The Secretary-General, UN, *High-Level Dialogue on International Migration and Development, An Eight-Point Agenda for Action*, (A/68/190) (2013) (Nov. 24, 2017), [www.un.org/en/ga/68/meetings/migration/pdf/migration-8 points-en.pdf](http://www.un.org/en/ga/68/meetings/migration/pdf/migration-8%20points-en.pdf) .

¹⁴⁰ See ILO, *Paragraph 14 of the Multilateral Framework on Labour Migration, Non-Binding Principles and Guidelines for a Rights-Based Approach to Labour Migration* 27, 28 (2006) (Nov. 11, 2017), www.ilo.org/wcmsp5/groups/public/..ed_protect/--protrav/-migrant/document.

¹⁴¹ See also Jan Niessen & Patrick.A.Taran, *Using the New Migrant Workers Convention*, 25 IMR SPECIAL ISSUE:UN INTERNATIONAL CONVENTION ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES, No.41, 859, 859-860(Winter 1991).

¹⁴² The number of international migrants over the world was estimated to be 244 million in the year 2015 and 48% of it is women migrants. See IOM, *Global Migration Trends, Fact Sheet* (2015) (Oct. 28, 2017), <http://www.iom.int/global-migration-trends-factsheet>.

¹⁴³ See *supra* note 64 Khalid Koser at 94-97.The increasing demand for gender selective jobs, changing gender relations, increase in demand for domestic work and sex trafficking are some of the factors leading to increase in migration of women workers.

contravenes the principle of equality and human dignity and it hampers the growth and the prosperity of society and family.¹⁴⁴

The women migrants often work in the isolated unregulated sectors where discrimination is rampant.¹⁴⁵ Though the participation of women migrants in different sectors of work has increased during globalization, nations do not give adequate recognition of their rights.¹⁴⁶ Domestic migrant workers, the majority of whom are women forms the world's most vulnerable workers.¹⁴⁷ The international documents like UDHR (1948), ICCPR (1966),

¹⁴⁴ See the preamble of CEDAW (1979). See also Paragraph 18 of the Vienna Declaration and Programme of Action (1993).

The human rights of women and the girl-child are an inalienable, integral and indivisible part of universal human rights. The equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels and the eradication of all forms of discrimination on the grounds of sex are priority objectives of the international community.

¹⁴⁵ See Patrick. A. Taran, *A Rights Based Approach to Migration*, in *MIGRATION AND HUMAN RIGHTS, THE UNITED NATIONS CONVENTION ON MIGRANT WORKERS RIGHTS* 153 (Ryszard Cholewinski, Paul De Guchteneire & Antoine Pecoud, ed., 2009). See also Paragraph 11 of the General Comment No.16 of the Committee on Economic, Social and Cultural Rights, on art. 3 of International Covenant on Economic, Social and Cultural Rights, E/C.12/2005/4 dated 11/8/2005. "Denial of jobs to women on the ground that they could become pregnant or employing them to low paid jobs etc are instances of discrimination based on sex".

¹⁴⁶ See generally Joya Misra & Sabine. N. Merz, *Neoliberalism, Globalisation, and International Division of Care*, in *GLOBALIZATION AND LABOUR LAWS* 75-77 (Nandini C.P. ed., 2007). One of the reasons for the inadequate recognition of the care workers is the fact that the majority of them are female migrants.

¹⁴⁷ See *supra* note 69 at 97. See also Paragraph 13 of the General Comment No.1 of the Committee on Protection of the Rights of all Migrant Workers and Members of their Families, on Migrant Domestic Workers, CMW/C/GC/1 dated 23/2/2011. The migrant women domestic workers suffer from excessive working hours, insufficient rest and leisure, restrictions on movement and travel and unfair wage structure. See also *supra* note 34 Isabelle Slinckx at 135.

ICESCR (1966), CEDAW (1979) and Equal Remuneration Convention (1951)¹⁴⁸ guarantee gender equality.

CEDAW (1979) can play a significant role in addressing gender specific problems faced by migrant women.¹⁴⁹

Article 1 of CEDAW (1979) defines

Discrimination against women as any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economical, social, cultural, civil or any other field. The contracting States shall condemn discrimination against women in all its forms and undertake policies to eliminate discrimination against women.¹⁵⁰

¹⁴⁸ The ILO Convention was adopted on 29th June 1951 and entered into force on 23 May 1953. India ratified it on 25/9/1958. It is one of the core conventions of ILO. It prohibits discrimination based on sex.

¹⁴⁹ According to Committee on CEDAW all women migrant workers are entitled to right to life, right to personal liberty and security, right not to be tortured, freedom from degrading and inhumane treatment, freedom from discrimination on the basis of sex, race, ethnicity, cultural particularities, nationality, language, religion or other status, freedom from poverty, right to an adequate standard of living, right to equality before the law and right to benefit from the due processes of the law. *See* Paragraph 6 of the General Recommendation No. 26 on Women Migrant Workers, CEDAW/C/2009/WP.1/R dated 5/12/ 2008.

¹⁵⁰ "CEDAW is criticized as extra ordinary ambitious because the implementation of the ideals set out in the Convention requires more than one generation to implement." *See* BETH A.SIMMONS, MOBILISING FOR HUMAN RIGHTS INTERNATIONAL LAW ON DOMESTIC POLICIES 254 (2009).

According to article 11 of CEDAW, women shall enjoy equal treatment in respect of the right to work, employment opportunities, free choice of profession, promotion, job security, vocational training, retraining, remuneration and benefits, evaluation of quality of work, social security in cases of retirement, unemployment, sickness, invalidity and old age, paid leave, health and safety in working conditions and safeguarding the function of reproduction. There shall not be any dismissal on the ground of pregnancy, maternity or marital status.

The unfamiliarity with the language and culture is a great hindrance for a migrant woman in accessing the rights recognized under various human rights documents.¹⁵¹

Table No : 3.14

NAME OF THE DOCUMENT	ARTICLE	RIGHT GUARANTEED
UDHR (1948)	Art. 2	Gender equality
ICCPR (1966)	Art.3	Gender equality
ICESCR (1966)	Art. 3	Gender equality

¹⁵¹ See Shirley Hune, *Migrant Women in the Context of International Convention on the Protection on the Rights of all Migrant Workers and Members of their Families*, 25 IMR SPECIAL ISSUE : UN INTERNATIONAL CONVENTION ON THE PROTECTION ON THE RIGHTS OF ALL MIGRANT WORKERS AND THE MEMBERS OF THEIR FAMILIES , No.4 , 800, 811, No.4, (Winter 1991). See also Paragraphs 5, 18 and 20 of the General Comment No.1 of the Committee on Protection of the Rights of all Migrant Workers and Members of their Families, CMW/C/GC/1 dated 23/2/2011.

CEDAW (1979)	Art. 2	Elimination of discrimination against women
	Art. 11	Equality in working conditions
Equal Remuneration Convention (1951) ILO	Art. 2	Equal remuneration for men and women workers for work of equal value
ICMW (1990)	Art. 7	Freedom from discrimination

Gender equality is an inviolable human right. A female migrant worker shall not be prejudiced on the ground that she is a woman. The human rights documents guarantee equal rights to both male and female workers. There shall be equal remuneration and equal working conditions. Equal pay for equal work is an integral element of gender justice, decent work and social security. In spite of the legal provisions, interstate migrant women construction workers are victims of gender injustice.

3.5.2. Good Conditions of work and interstate migrant construction workers

Right to work as recognized in the human rights document envisions right to decent work. The work in which basic rights are not followed cannot be treated as work.¹⁵² There shall be fair wages, freedom of choice of work, protection against unemployment, equal pay for equal work, decent living, safe and healthy working conditions, equal opportunity for promotion, rest, leisure,

¹⁵² See Gary S.Fields, *Decent Work and Development Policies*, 142 ILR, No.2, 240 - 243 (2003).

reasonable limitation of working hours, periodic holidays with pay and remuneration for public holidays.¹⁵³

Remuneration shall be reasonable .It includes salary and other allowances in cash or in kind paid by the employer to the worker.¹⁵⁴According to the opinion of the Committee on Economic, Social and Cultural Rights,

The wages are to be determined on the basis of output of the work, responsibilities of the worker, the level of skill and education required to perform the work, the impact of work on the health and safety of the worker, specific hardships related to work and the impact on the worker's personal and family life.¹⁵⁵

Proper rest and leisure is essential to maintain an appropriate balance between professional, family and personal responsibilities of the worker and to avoid work related stress, accidents and diseases.¹⁵⁶ The human rights documents like UDHR (1948), ICESCR(1966), Protection of Migrant Workers

¹⁵³ See articles 23 & 24 of UDHR (1948) and articles 6 & 7 of ICESCR (1966). See also ILO's Holidays with Pay Convention (Revised) (1970).

¹⁵⁴ See Paragraph 7 of General Comment No.23 of Committee on Economic, Social and Cultural Rights, on the Right to Just and Favourable Conditions of Work, art. 7 of ICESCR),E/C.12/GC 23 dated 27/4/ 2016.

¹⁵⁵ See Paragraph 10 of the General Comment No. 23 of Committee on Economic, Social and Cultural Rights, on the Right to Just and Favourable Conditions of Work, art. 7 of ICESCR),E/C.12/GC 23 dated 27/4/ 2016. "Wage supplements and other measures are to be provided for precarious workers to mitigate the insecurity created by lack of job."

¹⁵⁶ Paragraph 34 of the General Comment No.23 of Committee on Economic, Social and Cultural rights, on the Right to Just and Favourable Conditions of Work, art.7 of ICESCR), E/C.12/GC 23 dated 27/4/2016. Paragraph 38 explains daily rest and Paragraph 43 explains paid annual leave.

(Under Developed Countries) Recommendation (1955),¹⁵⁷ Migrant Workers Recommendation (1975)etc deal with different aspects of conditions of work.

Table No : 3.15

NAME OF THE DOCUMENT	ARTICLE	RIGHT GUARANTEED
UDHR (1948)	Articles 23 & 24	Right to fair conditions of work
ICESCR(1966)	Articles 6 & 7	Right to fair conditions of work
I C ERD (1965)	Art. 5(e) (i)	Right to fair conditions of work
The Protection of Migrant Workers (Under Developed Countries) Recommendation (1955) ILO	Art.23	Adequacy of wages and periodic revision of wages
Migrant Workers Recommendation (1975) ILO	Art. 21	Training and instruction in occupational safety and occupational hygiene for migrant workers

¹⁵⁷ Art.31 prohibits the substitution of alcohol or any harmful substance for wages. In a study conducted on Munda tribals from Eastern Bihar who had migrated to Punjab for agricultural work, it was noted that the employers used to give them drugs like opium in lieu of wages. The wages were not fully paid. See Amrjit Chandan, *Plight of Migrant Labour*, 14 EPW, No.17, 755 (Apr. 28, 1979).

The working conditions should be conducive to the growth of an individual. The migrant construction workers shall get proper rest and leisure. It will increase their productivity and lead to good relations in the industry. There should not be any compulsion on the migrant worker to accept a particular job. The migrant construction worker shall get minimum wages. Fair working conditions envision social security rights. During crisis, costs of economic imbalances are unequally distributed. It falls heavily upon the migrants. Social security measures will help the workers to overcome such crisis.

3.5.3. Adequate standard of living and interstate migrant construction workers

The migrant workers suffer deplorable living conditions.¹⁵⁸ They suffer interpersonal subordination and lead inhuman life.¹⁵⁹ Every human being has an inherent right to life.¹⁶⁰ The preamble of UN Charter recognizes the dignity and worth of human person and the equal rights of men and women. The preamble of ICCPR (1966) recognizes that the human rights derive from the inherent dignity of the human person.

¹⁵⁸ See Jeet Singh Mann, *Amplitude of Social Security Protection to Migrant Workers in Globalisation : A Critical Appraisal*, 3 LLJ, 17, 25 (Sept. 2013).

¹⁵⁹ See Rose Mary, Von Elling Bolaria & B.Sibgh Bolaria, *Immigrants, Migrants and Labour Market Opportunities*, in INTERNATIONAL LABOUR MIGRATION 201 (1997).

¹⁶⁰ Art.3 of the UDHR (1948) and art. 6 of ICCPR (1966).

The preamble of ICESCR (1966) states that the individual has a right to enjoy his rights and a duty to promote the rights of other individuals and community. The World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerances (2001) states that in order to eliminate racism and xenophobia against migrants, there shall be a harmonious relation between the migrant workers and rest of the society.¹⁶¹

Right to food is indispensable for the realization of inherent dignity of a person. It is closely linked to social justice.¹⁶² The documents like UDHR (1948), ICCPR (1966), ICESCR (1966), ICMW (1990), Migration for Employment Recommendation (Revised) (1949) and Protection of Migrant Workers (Under Developed Countries) Recommendation (1955) protect the right to an adequate standard of living. Article 11 of ICESCR (1966) states that the methods of production, conservation and distribution of food should be improved to make people free from hunger.

¹⁶¹ See Paragraph 49 of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerances (2001).

¹⁶² See Paragraph 4 of the General Comment No.12 of the Committee on Economic, Social and Cultural Rights, on the Right to Adequate Food, art.11 ,E/C.12/1999/5 dated 12/5/1999. The Committee affirms that

The right to adequate food is indivisibly linked to the inherent dignity of the human person and is indispensable for the fulfillment of other human rights enshrined in the international bill of human rights. It is also inseparable from social justice, requiring the adoption of appropriate economic, environmental and social policies, at both the national and international levels, oriented to the eradication of poverty and the fulfillment of all human rights for all.

The population shall have physical and economic access to food or its procurement.¹⁶³

Table No : 3.16

NAME OF THE DOCUMENT	ARTICLE	RIGHT GUARANTEED
UDHR (1948)	Art. 3	Inherent right to life
ICCPR (1966)	Art. 6	Inherent right to life
ICESCR (1966)	Art. 11	Right to an adequate standard of living, adequate food, clothing, housing and the continuous improvement of living conditions
ICMW (1990)	Art. 9	Protection of life and liberty of a migrant worker
The Migration for Employment Recommendation (Revised) (1949) ILO	Art. 10	Adequate food, clothing, accommodation, vocational training, transfer of earnings and schooling of children
Protection of Migrant Workers (Under Developed Countries) Recommendation (1955) ILO	Art. 42	supply of consumer goods, particularly essential products and food stuffs to migrant workers at reasonable prices

¹⁶³ See Paragraph 6 of the General Comment No.12 of the Committee on Economic, Social, and Cultural Rights, on the Right to Adequate Food, art. 11, E/C.12/1999/5 dated 12/5/1999. "The right to adequate food is realized when every man, woman and child alone or in community with others, have physical and economic access at all times to adequate food or means for its procurement." See also Paragraph 8 of the General Comment No.12 of the Committee on Economic, Social, and Cultural Rights, on the Right to Adequate Food, art. 11, E/C.12/1999/5 dated 12/5/1999.

The core content of the right to adequate food implies the availability of food in quantity and quality sufficient to satisfy the dietary needs of individuals free from adverse substances and acceptable within a given culture and the accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights.

Adequate standard of living means sufficient food, clothing, housing and good living conditions for the worker. The migrant construction workers have no access to adequate food. They do not possess enough land to cultivate. Due to frequent shifting of residence, they cannot avail the food subsidies provided by Government. They face bad housing and living conditions. Their standard of living can be improved by social security measures, minimum wages, food subsidies, housing schemes, development of infrastructure, incentives for education, enhancement of livelihood strategies at village level, etc.

3.5.4. Freedom of association and interstate migrant construction workers

Freedom of association is important to migrant workers than any other workers. The preamble to the Constitution of ILO declares that recognition of the principle of freedom of association is a means of improving conditions of labour and of establishing peace. Declaration of Philadelphia affirms that freedom of association and expression are essential to sustained progress. Freedom of association is considered as a core labour right by ILO. The workers shall not be victimized for trade union or political activity.¹⁶⁴

¹⁶⁴ Paragraph 31 of the General Comment No. 23 of Committee on Economic, Social and Cultural Rights, on the Right to Just and Favourable Conditions of Work, art.7 of ICESCR, E/C.12/GC 23 dated 27/4/2016. “Workers must have the opportunity for promotion free from reprisals related to trade union or political activity.”

Lack of collective bargaining is a serious limitation of migrant construction workers.¹⁶⁵ In the globalised age, the strength of the trade union has been reduced by flexible labour practices, informalisation of labour, ascendancy of managerial rights, new strategies like out sourcing and parallel production.¹⁶⁶ The NGOs can organise migrant workers, conduct awareness programmes, represent their problems in various forums and promote ratification of the human rights Conventions.¹⁶⁷ The trade union also faces some difficulty in organizing the migrants due to their casual nature of work.¹⁶⁸

The human rights documents like UDHR (1948), ICCPR (1966), ICESCR (1966), ICMW (1990), Freedom of Association and Protection of Right to Organize Convention (1948)¹⁶⁹, Convention on the Right to Organize and Collective Bargaining (1949)¹⁷⁰ and Protection of Migrant Workers (Under Developed Countries) Recommendation (1955) recognize freedom of association subject to lawful restrictions.

¹⁶⁵ See generally Tayra Mckee, *Organising Migrant Workers*, FORTNIGHT SUPPLEMENT. WHAT TO DO ABOUT RACISM AND THE EXPLOITATION OF MIGRANTS, No.451, 16, 16-17 (Mar. 2007).

¹⁶⁶ See Alkha. N. Sharma, *Flexibility, Employment and Labour Market Reforms in India*, in GLOBALIZATION AND LABOUR LAWS 163 (Nandini.C.P.ed., 2007).

¹⁶⁷ Majority of the ratification of ICMW is the result of campaigns of the NGOs as well as the migrant concerns in international and regional forums. See Catherine Tactaquin, *Migrant Rights Convention*, 9 IUR, FOCUS ON MIGRANT WORKERS, No.4, 3-4 (2002).

¹⁶⁸ See ILO, Paragraphs 232 & 233 of Global Report on Freedom of Association 57 (2008).

¹⁶⁹ The Convention was adopted by the General conference of the ILO on July 9, 1948 and entered in to force on July 4, 1950. It is a core labour convention.

¹⁷⁰ The Convention was adopted on July I, 1949, and came in to force on 18th July 1951. Art.1 protects the workers from anti-union activities. The worker shall not be compelled to relinquish his membership in particular association or join a particular association for retaining his job. It is a core labour convention of ILO. See also Workers Representatives Convention (1971).

Table No : 3.17

NAME OF THE DOCUMENT	ARTICLE	RIGHT GUARANTEED
UDHR (1948)	Art. 20	Freedom of peaceful assembly and association
ICCPR (1966)	Art. 21	Right of peaceful assembly
	Art. 22	Freedom of association including the right to form and join trade unions.
ICESCR (1966)	Art. 8	Freedom of association including the right to form and join trade unions.
ICMW (1990)	Art. 26	Freedom to join any trade union
	Art. 40	Right of regular migrant workers and their family to form association and trade unions in the State of employment
Freedom of Association and Protection of Right to Organize Convention (1948) ILO	Art. 2	Rights of both employers and employees to establish and join organizations of their choice
Convention on the Right to Organize and Collective Bargaining (1949) ILO	Art. 1	Employment of a person shall not be made dependent on the membership of a particular union
Protection of Migrant Workers (Under Developed Countries) Recommendation (1955) ILO	Art. 41	Freedom of association and freedom for all lawful trade union activities to migrant workers

Workers always constitute vulnerable group, so an organization to protect workers' rights is very important. Lawful trade union activities are recognized by the human right documents. Social security and freedom of association are necessary component of decent work. The interstate migrant construction workers are not organized like the resident construction workers in Kerala. The migrant status, illiteracy, poverty, social exclusion and language constraints prevent their organization.

3.5.5. Freedom from forced labour and interstate migrant construction workers

Slavery was permitted in various parts of the world till the 19th century.¹⁷¹ It is prohibited by the human rights documents like UDHR (1948), ICCPR (1966), ICESCR (1966), ICMW (1990), CEDAW (1979), Forced Labour Convention (1930)¹⁷² and Abolition of Forced Labour Convention (1957).¹⁷³

¹⁷¹ *Supra* note 21 PETER R.BAEHR at 20-21.

¹⁷² India ratified the Forced Labour Convention (1930) on 30/11/1954. Articles 1 to 25 of the convention places the restrictions for using forced labour within the transitional period. Articles 12 to 25 of the convention contain detailed provisions as to prohibition of forced labour in certain occupations like mines and also direct the States to guarantee welfare measures for workers regarding the health, duration of work, payment of wages, compensation for accidents and training when they undergo forced labour. "The Convention was drafted to regulate the practice of forced labour as a form of economic exploitation that was prevalent in colonial countries and certain independent States at a certain stage of development." *See supra* note 66 at 502.

¹⁷³ The Convention was adopted by the general conference of the ILO on 25 June 1957 and entered in to force on 17th January 1959. India ratified the Convention on 18/5/2000. The Convention advocates for the immediate and complete abolition of forced labour.

Article 2 of the Forced Labour Convention (1930) defines forced labour as

“All work or service which is exacted from any person under the menace of any penalty and for which the such person has not offered himself voluntarily.”

Article 1 of the Abolition of Forced Labour Convention (1957) prohibits the use of forced labour as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system or as a method of mobilizing and using labour for the purpose of economic development or as a means of labour discipline or as a punishment for having participated in strikes or as a means of racial, social, national or religious discrimination.¹⁷⁴

Article 2 of the Protocol to Forced Labour Convention 1930 (P.O .29) (2014) makes a special reference to protection of migrant workers as a category vulnerable to forced labour.¹⁷⁵ The migrant labour in sub human conditions is

¹⁷⁴ The 1957 Convention complements and supplements the conventions like Slavery Convention (1926), the Supplementary Convention on Abolition of Slavery, Slave Trade and Institutions and Practices Similar to Slavery (1956) and Forced Labour Convention (1930). *See supra* note 66 at 527.

¹⁷⁵ The protocol provides for the measures to prevent forced labour and makes provisions for rehabilitation. Art. 1 says that “The State shall take measures to prevent and eliminate use of forced labour and provide compensation to the victims and to punish the perpetrators of the crime.” *See also* Donald. K.Anton, *Introductory Note to Protocol 2014 to the Forced Labour Convention 1930 (ILO)*, 53 ILM, No.6, 1229,1227-1235(2014).

similar to slavery.¹⁷⁶ Migrants often become the prey of human traffickers due to their vulnerability.¹⁷⁷

There shall be protection of victims of the trafficking and punishment for offenders.¹⁷⁸

Table No : 3.18

NAME OF THE DOCUMENT	ARTICLE	RIGHT GUARANTEED
UDHR (1948)	Art. 4	Prohibition of slavery or servitude
ICCPR (1966)	Art. 8	Prohibition of slavery, slave trade, servitude and compulsory labour
ICESCR (1966)	Art. 6	Freedom to select the labour
CEDAW (1979)	Art. 6	Suppression of all forms of traffic in women and exploitation
ICMW (1990)	Art. 10	Prohibition of forced labour of migrant workers and family.
The Forced Labour Convention ILO (1930)	Art. 1	Abolition of forced labour
Abolition of Forced Labour Convention (1957) ILO	Art. 1	Prohibition of the use of forced labour

¹⁷⁶ See Human Development Report 40-41 (2015).

¹⁷⁷ The local net work of traffickers recruits labourers through their friends, relatives or family members. See Kay Warren, *The 2000 UN Human Trafficking Protocol; Rights, Enforcement, Vulnerabilities, in THE PRACTICE OF HUMAN RIGHTS TRAFFICKING LAW BETWEEN THE GLOBAL AND LOCAL* 246 (Mark Goodale & Sally Engle Merry ed., 2007).

¹⁷⁸ See Report of The Secretary-General, *UN High-Level Dialogue on International Migration and Development, An Eight-Point Agenda for Action*, (A/68/190) (2013) (Nov.24, 2017), www.un.org/en/ga/68/meetings/migration/pdf/migration-8-points-en.pdf .

Modern world condemns slavery. Forced labour is a form of slavery and it violates the inherent dignity of workers. Human trafficking is a grave transnational crime. The migrant workers do not get sufficient protection from trafficking. Undocumented international labour migration aggravates forced labour. The subordination of migrant workers to the contractors and employers due to their weak bargaining capacity makes them susceptible to various forms of forced labour. The migrant women construction workers and children are more vulnerable to forced labour than male workers.

3.5.6. Protection of child hood and interstate migrant construction workers

Migration is a reason for child labour.¹⁷⁹ Child labour is an economic exploitation of migrant children. State has the duty to set minimum age for employment of children. Child labour deprives the opportunity to education. Access to basic education is considered as one of the most important right of a person.

Committee on Migrant Workers notes that migrant children may suffer from multiple forms of discrimination due to race, ethnicity, gender and disability.¹⁸⁰

¹⁷⁹ See Kalicharan, *International Perspective of Child Labour: Problems and Solutions*, 4 LLJ, 33, 39 (Nov. 2012).

¹⁸⁰ Paragraph 76 of the General Comment No.2 of the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, on the Rights of Migrant Workers in an Irregular Situation and Members of their Families, CMW/C/GC/2 dated 28/8/2013.

The human rights documents like UDHR (1948), ICCPR (1966), ICESCR (1966)¹⁸¹, ICMW (1990), UN Convention on the Right of Child (1989),¹⁸² The Minimum Age Convention (1973)¹⁸³ and Worst Forms of Child Labour Convention (1999) protect childhood. Abolition of child labour is considered as one of the core labour rights by ILO. The worst forms of child labour include slavery, debt bondage, prostitution, pornography, child trafficking, using the child for trafficking of drugs and so on.¹⁸⁴ State has the duty to rehabilitate and social integrate freed children by methods like education and vocational training.¹⁸⁵ All the legal and administrative measures proposed for welfare of migrant children shall give emphasis on general principle of non-discrimination on the grounds of race, national or ethnic origin as among others. Welfare of the child shall be given the prime importance.

¹⁸¹ Art. 13 of ICESCR (1966) require that States shall not discriminate any one in providing education. *See also* Paragraph 6 of the General Comment No.13 of Committee on Economic, Social and Cultural Rights, on the Right to Education, art.13 of the Covenant, E/C.12/1999/10 dated 8/12/1999. "Education must be accessible to all especially the most vulnerable groups in law and facts without discrimination on any of the prohibited grounds."

¹⁸² Art. 2 says that the rights recognized under the Convention shall not be denied on the ground of status of parent of child. India ratified the Convention on 11/12/1992 subject to reservation on art. 33(2) (a).

¹⁸³ The Minimum Age Convention (1973) was adopted by ILO on the 26th day of June 1973 and came in to force on 19th June 1976. It is intended to abolish child labour and to fix a minimum age for employment that enable the fullest physical and mental development of the young persons. Art. 2(3) states that "The minimum age specified shall not be less than the age of completion of compulsory schooling and it shall not be less than 15 years."

¹⁸⁴ *See* Art.3 of the Worst Forms of Child Labour Convention (1999).

¹⁸⁵ *See* art. 7 of the Worst Forms of Child Labour Convention (1999).

Table No : 3.19

NAME OF DOCUMENT	ARTICLE	RIGHT GUARANTEED
UDHR (1948)	Art.26	Free and compulsory elementary education
ICCPR (1966)	Art. 26	Protection of childhood
ICESCR (1966)	Art. 10(3) Art. 13	Protection from exploitation Right to education
Convention on the Right of Child (1989)	Art. 32	Prohibition of economic exploitation of child and employment in hazardous occupations, fixation of a minimum age for child labour, regulation of hours of work
ICMW(1990)	Art. 30	Basic right of access to education on the basis of equality of treatment with nationals
The Minimum Age Convention (1973) ILO	Art. 1	Abolition of child labour and fixation of minimum age for employment
Worst Forms of Child Labour Convention (1999) ILO	Art. 1	Abolition of worst forms of child labour

Child rights are human rights. Protection of child hood is a facet of social security. Education has an important role in eliminating child labour. Education leads to the social and economic empowerment. Migrant children are not capable of enjoying the benefits of child hood. On the contrary they are subjected to various abuses. The migrant children are discriminated in economic and social rights. Child labour and child trafficking are more common among migrant workers. It badly affects the mental and physical capabilities migrant child.

3.6. RATIFICATION OF CONVENTIONS BY INDIA

It can be seen that there are lot of human right documents that recognize social security and allied rights. However the implementation of social security rights guaranteed under these documents depends on certain factors like ratification. The majority of conventions providing social security and allied rights are not ratified by India.

Table No : 3.20

CONVENTIONS	REMARKS
Abolition of Forced Labour Convention (1957)	Ratified on 18-5-2000
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)	Signed on 14-10-1997

Convention on the Elimination of Discrimination Against Women (CEDAW) (1979)	Ratified on 9-7-1993 subject to reservation on articles 5(a), 16(1), 16(2) and 29(1)
Convention on the Rights of Persons with Disabilities (2006)	Ratified on 1-10-2007
Convention on the Rights of the Child (CRC) (1989)	Ratified on 11-12-1992 subject to reservation on article 33(2)(a)
Discrimination (Employment & Occupation) Convention (1958)	Ratified on 3-6-1960
Employment Injury Benefits Convention (1964)	Not ratified
Employment Promotion and Protection against Unemployment Convention (1988)	Not ratified
Equal Remuneration Convention (1951)	Ratified on 25-9-1958
Equality of Treatment (Accidents Compensation) Convention (1925)	Ratified on 30-9-1927
Equality of Treatment (Social Security) Convention (1962)	Ratified on 19-8-1964, accepted branches (a) to (c)
Forced Labour Convention(1930)	Ratified on 30-11-1954
Freedom of Association and Protection of Right to Organize Convention (1948)	Not ratified
Holidays with Pay Convention (Revised) (1970)	Not ratified
International Convention on the Elimination of All Forms of Racial Discrimination (1966)	Not ratified
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW) (1990)	Not ratified

International Convention on Civil and Political Rights (ICCPR)(1966)	Ratified on 10-4-1979 subject to reservation on articles 1, 9 and 13
International Convention on Economic, Social and Cultural Rights (ICESCR) (1966)	Ratified on 10-4-1979 subject to reservation on articles 1, 4, 7(c) and 8
Maintenance of Migrant's Pension Rights Convention (1935)	Not ratified
Maternity Protection Convention (2000) ILO	Not ratified
Medical care and Sickness Benefits Convention (1969)	Not ratified
Migrant Workers (Supplementary Provisions) Convention (1975)	Not ratified
Migration for Employment Convention (Revised) (1949)	Not ratified
Minimum Age Convention (1973)	Ratified on 13-5-2017
Occupational Health Services Convention (1985)	Not ratified
Occupational Safety and Health Convention (1981)	Not ratified
Old Age, Invalidity and Sickness Benefit Convention (1967)	Not ratified
Right to Organize and Collective Bargaining Convention (1949)	Not ratified
Safety and Health in Construction Convention (1988)	Not ratified
Safety Provisions (Building) Convention (1937)	Not ratified
Slavery Convention (1926)	Signed on 12-3-1954

Social Security (Minimum Standards) Convention (1952)	Not ratified
Supplementary Convention on Abolition of Slavery, Slave Trade and Institutions and Practices Similar to Slavery (1956)	Ratified on 23-6-1960
Termination of Employment Convention(1982) ILO	Not ratified
Unemployment Convention(1919) ILO	Denounced on 16-4-1938
Vocational Rehabilitation and Employment (Disabled Persons) Convention (1983)	Not ratified
Working Environment (Air Pollution, Noise and Vibration) Convention (1977)	Not ratified
Workmen's Compensation (Occupational Diseases) Convention (1934)	Ratified on 13-1-1964
Worst Forms of Child Labour Convention (1999)	Ratified on 13-6-2017

It is submitted that being a welfare State, India has the prime obligation to protect human rights of its workers. Though all these conventions are not formally ratified by our country, the basic rights are protected by the Constitution of India.

3.7. CONCLUSION

The UNO and its organs have significantly contributed to the development of human rights standards of migrant workers. UN Charter refers to human dignity, equality, better standards of life and the socio economic development of people throughout the world.

The migrant workers are often denied the rights promised by UN Charter. Human dignity and better standards of life can be realized for migrant workers only through the social security measures. UDHR (1948) recognizes the right to social security as a basic right of an individual. It also recognizes other civil and economic rights which are closely linked to social security of migrant workers.

The right to social security is an economic and social right and it requires a positive action from the part of States. The preamble of ICCPR (1966) recognizes that human beings can enjoy freedom from fear and want only when they enjoy economic, social and cultural rights along with civil and political rights.

The ICESCR (1966) recognizes various aspects of right to work and social security. It provides for the progressive realisation of the rights subject to economic resources of the States. The individual has a corresponding duty to promote the rights of other individuals and community. ICESCR stresses that there should be the freedom to select work. The working conditions shall be fair. The Government should provide enough employment opportunities. Lack of labour mobility is a cause and consequence of poor social security of migrant construction workers.

ICMW (1990) is unique in many aspects. It codifies various rights for migrants which are not recognized by other treaties. It gives equal importance to the family of the worker also. The Convention realizes that international migration can be regulated only through the cooperation of international community. It imposes certain duties on the State of origin, State of employment and State of transit. The convention states that if the migrant worker fulfils the requisite conditions, the authority shall not deny the benefit. But there are no provisions on portability of social security benefits. There are no specific provisions for the social security of migrant women workers and children.

Migrant women construction workers face grave human rights abuses at workplace. She has no social protection at contingencies. CEDAW (1979) ensures equality in social security rights of women. It takes care of special circumstances like pregnancy and mother hood. There are other international documents like ICERD, Convention on the Rights of Persons with Disabilities (2006), Convention on the Right of Child (1989) etc that secure different aspects of social security of migrant workers.

ILO is the specialized agency of UNO that is exclusively meant for the promotion of international labour standards. ILO takes care of the migrant workers as vulnerable group. There are some core labour rights namely freedom from discrimination, freedom from child labour, freedom from forced labour and freedom of association.

The Declaration on Fundamental Principles and Rights at Work (1998) imposes an obligation on India to respect, promote and realize the core labour rights by virtue of her membership in ILO. The interstate migrant construction workers are deprived of the core labour standards of ILO. The ILO documents like Social Security (Minimum Standards) Convention (1952), Equality of Treatment (Social Security) Convention (1962), Maintenance of Social Security Rights Convention (1982), Social Protection Floors Recommendation (2012), Migration for Employment Convention (Revised) (1949), Migration for Employment Recommendation (Revised) (1949), Protection of Migrant Workers (Under Developed Countries) Recommendation (1955), Migrant Workers (Supplementary Provisions) Convention (1975) and Migrant Workers Recommendation (1975) provide sufficient guidelines for securing social security of interstate migrant construction workers.

In addition to the above referred documents ILO has issued a plethora of recommendations and conventions regulating the working conditions like rest, holidays, workplace safety, environmental hygiene, working hours, night shift, remuneration, minimum wages, compensation on accidents, that are applicable to migrant construction workers also. One of the greatest contributions of ILO to the international labour force is the principle of decent work for all.

The interstate migrant construction workers have the inalienable right to social security, dignity of life, adequate standard of life, freedom from discrimination, gender justice, right to work, right to fair remuneration, right to rest and leisure, right to health, right to shelter, freedom of association, protection from child labour and forced labour and so on. Human rights documents promises them minimum income security and access to essential services.

The enforcement of human rights depends on the will of the States. Though India sends and receives migrant workers on a large scale, the country has not ratified the ICMW (1990). It is one of the poorest ratified Conventions of UNO. The Constitution of India and labour legislations do recognizes the international labour standards according to the frame work of Constitution. Being a welfare State, India and also Kerala has the duty to protect the human rights of migrant workers. The State of Kerala cannot discriminate its own workers and workers from other States in granting social security rights because equality of treatment is a basic human right. The workers have migrated to Kerala because of the lack of social security in their home place. But the social security and other conditions of work of interstate migrant workers in Kerala fall below the accepted human right standards. They face gross human right violations in Kerala and do not enjoy decent work.

CHAPTER IV

**RIGHT TO SOCIAL SECURITY OF INTERSTATE
MIGRANT CONSTRUCTION WORKERS ; CONSTITUTIONAL
PERSPECTIVE**

The architects of the Constitution of India were greatly influenced by the human right jurisprudence. Hence they incorporated almost all the human rights in the Constitution. The ideals of human right to social security can be found in the preamble, fundamental rights, directive principles of state policy and fundamental duties.

The Constitution of India is based on the ideals of social justice. It contains various provisions for the labour welfare. The preamble embodies the spirit of the Constitution. All the fundamental rights guaranteed by the Constitution are available to the interstate migrant construction workers. The directive principles of state policy specifies the social and economic rights of migrant workers. The fundamental duties are relevant for the protection of migrant workers as the rights and duties are always correlated.

The right to work and right to social security are not enumerated as distinct fundamental rights. They are classified as directive principles. This chapter makes an analysis of the right to social security of interstate migrant construction workers enshrined in the Constitution of India.

4.1. SOCIAL JUSTICE AND INTERSTATE MIGRANT CONSTRUCTION WORKERS

A nation that promises a socialist pattern of society has to ensure the social security of workers.¹ Social security is based on the ideals of human dignity and social justice. The underlying idea behind social security measures is that a citizen who has contributed or is likely to contribute to his country's welfare should be given protection against certain hazards.² The preamble of the Constitution promises justice, liberty, equality and fraternity.³ Preamble has an important place in the Constitution. The aspirations and expectations of the people of independent India are visualized in the preamble.⁴ The fundamental rights and the directive principles of state policy were enacted to give effect to the principles of preamble.⁵ According to Dr. Ambedkar

“These principles of liberty, equality and fraternity are not to be treated as separate items in a trinity. They form a union of trinity in the sense that to divorce one from the other is to defeat the very purpose of democracy”.⁶

Justice has three facets-social, economic and political. They are closely intermingled. The Constitution cannot secure economic justice to the people

¹ In *D.S Nakara v Union of India (1983)1 SCC 305,327(India)*, the Supreme Court observed that “The principal aim of a socialist State is to eliminate inequality in income, status and standard of life. The basic frame work of socialism is to provide a decent standard of life to the working people, social security, medical aid, freedom from want etc.”

² See Report of National Commission on Labour 162 (1969).

³

We, the people of India, having solemnly resolved to constitute India into a sovereign socialist secular democratic republic and to secure to all its citizens: justice, social, economic and political; liberty of thought, expression, belief, faith and worship; Equality of status and of opportunity; and to promote among them all fraternity assuring the dignity of the individual and the unity and integrity of the nation.

⁴ See M.P. JAIN, INDIAN CONSTITUTIONAL LAW 12 (2006).

⁵ See V.N. SUKLA, CONSTITUTION OF INDIA 45 (2008).

⁶ Constitutional Assembly Debates Vol. XI ,979.

without securing social justice to them. Political justice is possible only through economic and social justice. The ultimate end of every legal system is to secure justice to its people.⁷ Without justice, the concept of equality, liberty and fraternity are illusory.⁸ The economic justice cannot be attained until there is distributive justice. Socialism should lead to economic justice.⁹ The gap between the rich and the poor should be minimized. The common man should get his due.¹⁰ There shall not be any concentration of wealth on few hands. The individual development should lead to the upliftment of society as a whole.¹¹ The Constitutional provisions for social justice are intended to reduce the imbalances in social, economic and political development of the people.¹²

Social justice is a Constitutional device to reduce the suffering of weak populations like interstate migrant construction workers. In *Air India Statutory Corporation v United Labour Union*,¹³ K.Rama Swamy J., observed that

Social justice is the integral part of justice in the generic sense. Justice is the genus of which social justice is the one of its species. It is a dynamic devise to mitigate the sufferings of the poor, weak, dalits, tribes and

⁷ See N.K.JAYAKUMAR, LECTURES IN JURISPRUDENCE 169(2010).

⁸ See R.C. LAHOTI J., PREAMBLE THE SPIRIT AND BACKBONE OF THE CONSTITUTION OF INDIA 10-12 (2004).

⁹ The word socialist was inserted in the preamble by the 76th amendment of the Constitution.

¹⁰ In *Consumer Education & Research Centre v. Union of India AIR 1995 SC 922, 938 (India)* while dealing with the safety of Asbestos Workers, K Ramaswamy J., observed that

What is due cannot be ascertained by absolute standard which keeps changing depending upon the time, place and circumstances. The Constitutional concern of social justice as an elastic continuous process is to accord justice to all sections of the society by providing facilities and opportunities to remove handicaps and disabilities with which the poor languishing to secure dignity of their person.

¹¹ *Supra* note 8 at 80.

¹² See Saxena, *Social Justice & Constitution*, in LAW AND CHANGING SOCIETY 190 (Manju Saxena & Harish Chandran ed., 1999).

¹³ *AIR 1997 SC 645, 669 (India)*.

deprived sections of the society and to elevate them to the level of equality to live a life with dignity of person. Social justice is not a simple or single idea of a society, but it is an essential part of complex social change to relieve the poor from handicaps, penury to ward off distress and to make their life livable for great good of the society at large. In other words the aim of social justice is to attain substantial degree of social, economic and political equality, which is the legitimate expectation and Constitutional goal.

Social justice is essential for a migrant construction worker to lead a dignified life.¹⁴ Social justice is available only in the absence of exploitation.¹⁵ The preamble of the Constitution of India envisions an egalitarian society based on the principles of justice, liberty equality and fraternity. Social justice can be realized only when there is equality, fraternity and liberty. There shall be economic, social and political justice. The migrant workers shall attain economic independence. They shall get enough employment, fair wages, favourable working conditions and social security rights. The worker shall get an opportunity to take part in decision making process. It will lead to the political empowerment of the worker. When the society is stratified on grounds of caste, economic position, language or migrant status there will not be any

¹⁴ See *Harjinder Singh v Punjab State Warehousing Corporation* (2010) 3 SCC 192 (India) Paragraph 43. Ganguly J., observed that “Social Justice, the very signature tune of our Constitution and being deeply embedded in our Constitutional ethos in a way is the arch of the Constitution which ensures rights of common man to be interpreted in a meaningful way so that life can be lived with human dignity.”

¹⁵ See S.Waseem Ahmad & M. Ashraf Ali, *Social Justice and Constitution of India*, 67 THE INDIAN JOURNAL OF POLITICAL SCIENCE, No.4, 767, 768 (Oct.-Dec.2006).

equality. The interstate migrant construction workers in Kerala are treated unequally in social life. When the migrants are excluded from the main stream of the society, the principle of fraternity is violated. The workers shall have the liberty to exercise their rights in a reasonable manner. When the migrant workers are living in dismal conditions there is no social justice and human dignity.

4.2. FUNDAMENTAL RIGHTS AND INTERSTATE MIGRANT CONSTRUCTION WORKERS

The fundamental rights are designed to make a social revolution in India. According to Granville Austin,

Indian Constitution is first and foremost a social document. The majority of its provisions are either directly aimed at furthering the goals of social revolution or attempt to foster this revolution by establishing certain conditions necessary for its achievement. Yet despite the permeation of the entire Constitution by the aim of national renaissance, the core of the commitment to the social revolution lies in part III and part IV in the fundamental rights and in the directive principles. They are the conscience of the Constitution. The fundamental rights and directive principles had their roots deep in the struggle for independence. And they were included in the Constitution in the hope and expectation that one day the tree of true liberty would bloom in India. The rights and principles thus connect India's future, present and past adding greatly to the significance of their inclusion in the

Constitution, and giving strength to the pursuit of the social revolution in India.¹⁶

Social revolution is possible only when the underprivileged groups like interstate migrant construction workers are enriched in their life. All the fundamental rights enunciated in part III of the Constitution are available to migrant construction workers. The fundamental rights can be broadly grouped as right to equality,¹⁷ right to freedom¹⁸, right against exploitation,¹⁹ right to freedom of religion,²⁰ cultural and educational rights²¹ and the right to constitutional remedies.²² For a migrant worker, the right to equality, freedom of association, freedom of occupation, right to life and personal liberty, freedom from forced labour and freedom from child labour are significant for the achievement of right to social security.

4.3. RIGHT TO EQUALITY AND INTERSTATE MIGRANT CONSTRUCTION WORKERS

The services of migrant construction workers are required to meet the challenges of the globalised economy.²³ But the unorganized poor migrants are always treated unfavourably in the society. It is the negation of right to equality of migrant worker. Articles 14 to 18 of the Constitution explain the right to

¹⁶ GRANVILLE AUSTIN, *THE INDIAN CONSTITUTION, CORNER STONE OF A NATION* 50 (1966).

¹⁷ Articles 14 - 18 of the Constitution of India.

¹⁸ Articles 19-22 of the Constitution of India.

¹⁹ Articles 23 & 24 of the Constitution of India.

²⁰ Articles 25-28 of the Constitution of India.

²¹ Articles 29 & 30 of the Constitution of India.

²² Articles 32 of the Constitution of India.

²³ Patrick. A. Taran, *The Need for a Rights Based Approach to Migration in the Age of Globalisation*, in *MIGRATION AND HUMAN RIGHTS*, THE UNITED NATIONS CONVENTION ON MIGRANT WORKERS RIGHTS 151 (Ryszard cholewinski, Paul De Guchteneire, Antoine Pecoud ed.,2009).

equality. It includes the principles of general equality, freedom from discrimination, gender justice, equal pay for equal work, protection from sexual harassment at workplace and so on.

4.3.1. Freedom from discrimination

Article 14 provides for the general principle of equality.²⁴ It assures equality before law and equal protection of laws. Equality before law means that all persons are equal before law and the absence of any kind of privileges. It is a negative idea where as the concept of equal protection of law has a positive idea. Law should be applied equally to those who are equally situated.²⁵

Article 15(1) prohibits discrimination on grounds only of religion, race, caste, sex, place of birth or any of them.²⁶ The interstate migrant workers are badly treated because of their migrant status.²⁷ It amounts to discrimination on the basis of place of birth which is prohibited under article 15(1). In India the birth in a particular caste determines the social status of a person. Usually the poor unskilled migrant workers belong to backward class and occupy the

²⁴ Art. 14 of the Constitution of India states 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.”

²⁵ See 1 H.M.SEERVAI, CONSTITUTIONAL LAW OF INDIA 435(2017).

²⁶ Art. 15 (1) of the Constitution of India states that “The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.”. See also *supra* note 4 at 855 “In view of certain amount of indefiniteness attached to the general principles of equality enunciated in art.14 separate provisions to cover discriminatory situations have been made by subsequent articles. Art. 15 prohibits discrimination against citizens on such specific grounds as religion, race, caste, sex or place of birth”.

²⁷ See Paragraph 13 of General Comment No.26 of the Committee on CEDAW, on Women Migrant Workers, CEDAW/C/2009/WP1/R dated 5/12/ 2008.

lowest economic and social position.²⁸ The observation of the Committee on Economic, Social and Cultural Rights is relevant for interstate migration also.

The Committee observes that

“The social and economic condition of a person living in poverty or homelessness lead to pervasive discrimination. The individual worker should not be treated arbitrarily or stigmatized because of the inferior position in society.”²⁹

Principle of equality as envisaged under article 14 includes equal pay for equal work.³⁰ Though it was primarily treated as a directive principle, now it is elevated as a fundamental right.³¹ In *Grih Kalyan Kendra Workers Union v Union of India*.³² K. N. Singh and N.D. Ojha JJ. have made the following observations.

Equal pay for equal work is not expressly declared by the Constitution as fundamental right, but in view of the directive principles of state policy contained in article 39(d) of the Constitution equal pay for equal work has assumed the status of fundamental right in service

²⁸ “SC and ST are over represented in short term migration.” See Ministry of Housing and Urban Poverty Alleviation, Paragraph 35 of the Report of Working Group on Migration 14 (2017).

²⁹ See Paragraph 35 of General Comment No. 20 of the Committee on Economic, Social and Cultural Rights, on Non-Discrimination in Economic, Social and Cultural Rights, art. 2 para.2 of ICESCR, E/C-12/GC-20 dated 2/7/2009.

³⁰ In *State of Madhya Pradesh v Pramod Bharathiya AIR 1993 SC 286 (India)*, Supreme Court held that the doctrine of equal pay for equal work is implicit in the doctrine of equality enshrined in art. 14 and it flows from it.

³¹ In *Randhir Singh v Union of India, AIR 1982 SC 879, 881-882 (India)* the writ petition was filed by a driver constable in Delhi Police Force under the Delhi administration. Chinnappa Reddy J., observed that

The principle of equal pay for equal work is certainly a Constitutional goal. Construing articles 14 and 16 in the light of preamble and art. 39(d), we are of the view that the principle of equal pay for equal work is deducible from those articles and may be properly applied to cases of unequal scales of pay based on no classification or irrational classification.

³² *AIR 1991 SC 1173 (India)*. The writ petition was filed for issuing mandamus to pay equal wages.

jurisprudence having regard to the Constitutional mandate of equality in article 14 and article 16 of Constitution.³³

The doctrine of equal pay for equal work requires that there shall not be any discrimination in respect of wages among male and female workers who are doing work of a similar nature.³⁴ As far as migrant construction workers are concerned there is a disparity in wages among same sexes. The migrant male workers in the construction sector are getting lesser wages compared to the male local workers. The interstate migrant worker shall get equal pay for equal work with local workers. Likewise the women migrant construction worker shall receive equal pay for equal work with local female workers and other male workers. Adequate wages are essential for securing economic and social security of migrant workers.

Equality does not mean that all human beings are equal mentally and physically. It denotes absence of discrimination. Everyone shall be able to develop his or her potential capacities without any discrimination.³⁵ The migrant status shall not create any impediment in the enjoyment of rights of a worker. Every one shall get his or her due.³⁶

³³ *AIR 1991 SC 1173, 1176 (India)*.

³⁴ *See § 4 of the Equal Remuneration Act (1976)*.

³⁵ *See M.V.PYLEE, AN INTRODUCTION TO THE CONSTITUTION OF INDIA 49 (1995)*.

³⁶ V. R. Krishna Iyer J., observes that

While the essence of justice is giving each man or group his or her due, what is due to each depends on the ethos of political system and the property relations governing a given society. Law itself is a means to an end, justice being its goal. In a democratic system with a socialist slant afflicted by pervasive, poignant poverty and intent on planned development, social justice has a distinct hue, egalite a militant quality and human rights a radical thrust.

See V.R.KRISHNA IYER J., SOCIAL JUSTICE-SUNSET OR DAWN 3 (2008).

The migrant construction workers in Kerala are discriminated on the basis of caste, migrant status and sex. Discrimination is against the principle of equality. They are disadvantaged with respect to their social and economic status. Migrant construction worker is entitled to equal treatment with resident workers. When migrant workers and local workers are not paid equally the doctrine of equal pay for equal work is violated. Classification is permitted by law provided it is reasonable. The classification of the workers as local workers and migrant workers when the nature of the work is similar is unreasonable and unconstitutional.

4.3.2. Gender justice

Women suffer discrimination in all spheres of life from historical times. She faces discrimination in education, employment, property rights, participation in social and cultural life, etc.³⁷

According to V.R.Krishna Iyer J.,

“The biggest minority in India is its women hood subjected to generations of gender injustice”.³⁸

There are various labour legislations in India that protect the rights of working women. These rights are available for the women workers in the formal sector.³⁹

The unorganised migrant women construction workers are outside the protection of labor laws.

³⁷ See P.ISHWARA BHAT, LAW AND SOCIAL TRANSFORMATION 516 (2009).

³⁸ See *supra* note 36 at 5.

³⁹ See MONICA CHAWLA, GENDER JUSTICE, WOMEN AND THE LAW IN INDIA 234-235(2006).

The number of women migrants are increasing progressively over the years.⁴⁰ Though they are entering into new sectors of work, they are seen concentrated on certain gender specific areas.⁴¹ It increases their vulnerability at workplace. The woman worker spends considerable time in care work which is unproductive. It deprives her of the time and energy to be spent on paid and productive work.⁴² The migrant women are not an exception to this general disadvantage suffered by women.

The migrant women workers face the disadvantage as women and as migrant in the workplace.⁴³ When the interstate migrant women construction workers are discriminated against male workers in respect of working conditions and social security benefits, it is discrimination on the basis of sex which is hit by article 15(1). They shall be protected from sexual abuses at workplace. The historic subordination of females resulted in the gender neutral

⁴⁰ The major reason for women migration is marriage. Unemployment, poverty and starvation also act as push factors for migration. *See* K. Gopal Iyer, *Migrant Labour and Human Rights Violation*, in *MIGRANT LABOUR AND HUMAN RIGHTS IN INDIA* 32-47 (K.Gopal Iyer ed., 2003).

⁴¹ The gendered roles such as domestic care, old age care etc act as constraints in seeking employment. *See* Arpita Banerjee & Saraswati Raju, *Gendered Mobility : Women Migrants and Work in Urban India*, 44 *EPW*, No.28, 115, 116 (Jul.11-17, 2009).

⁴² *See generally* S.R. MYNENI, *LAW AND POVERTY* 128-131 (2009). *See also* Human Development Report 11-12(2015).

Care work includes housework, such as preparing meals for the family, cleaning the house and gathering water and fuel, as well as work caring for children, older people and family members who are sick. Across most countries in all regions, women work more than men. Women are estimated to contribute 52% of global work, men 48%. But even if women carry more than half the burden, they are disadvantaged in both realms of work – paid as well as unpaid work. Unpaid work in the home is indispensable to the functioning of society and human well being. Yet when it falls primarily to women, it limits their choices and opportunities for other activities that could be more fulfilling to them. Even when women are in paid work, they face discrimination and disadvantages. Globally women earn 24% less than men.

⁴³ “Women migrant workers are more insecure because of the odd work hours. They face exploitation in terms of adverse working conditions, lower wages and insecure living conditions and at times, sexual harassment”. *See* NCEUS, Paragraph 23 of the Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector 98 (2007).

migration policies.⁴⁴ The workplace shall be women friendly. The Government policy to protect the women workers from sexual exploitation at workplace should contain gender specific approaches.⁴⁵

In *Visakha v State of Rajasthan*⁴⁶, the J.S.Verma CJ., stated that sexual harassment at workplace amounts to violation of gender equality and right to life and personal liberty which is a clear violation of articles 14, 15 and 21 of the Constitution. The fundamental right to carry on any occupation depends on the availability of safe working environment. Sexual harassment violates right to profession.⁴⁷ Appropriate working conditions should be provided in respect of work, leisure, health and hygiene to ensure that there is no hostile environment towards women at work place and no employee women should have a reasonable ground to believe that she is disadvantaged in connection

⁴⁴ See Nicola Piper, *Gendering the Politics of Migration*, 40 IMR GENDER AND MIGRATION REVISITED, No.1, 133,139 (Spring 2008).

⁴⁵ See Paragraph 48 of General Comment No.23 of Committee on Economic, Social and Cultural Rights, on the Right to Just and Favourable Conditions of Work (art.7 of ICESCR), E/C.12/GC 23 dated 27/4/ 2016.

A national policy to be applied in the work place, in both public and private sectors, should include at least the following elements. (a) explicit coverage of harassment by and against any worker (b) prohibition of certain acts that constitute harassment, including sexual harassment (c) identification of specific duties of employers, managers, supervisors and workers to prevent and, where relevant, resolve and remedy harassment cases (d) access to justice for victims, including through free legal aid (e) compulsory training for all staff including for managers and supervisors (f) protection of victims, including the provision of focal points to assist them as well as avenues of complaint and redress (g) explicit prohibition of reprisals (h) procedures for notification and reporting to a central public authority of claims of sexual harassment and their resolution, (i) provision of a clearly visible work place – specific policy, developed in consultation with workers, employers and their representative organizations, and other relevant stakeholders such as civil society organizations.

⁴⁶ *AIR 1997 SC 3011(India)*. In this case Supreme Court applied the principles of international documents in the absence of domestic law and laid down certain guidelines that are to be followed by the private and public institutions to prevent sexual harassment at workplace.

⁴⁷ *AIR 1997 SC 3011, 3012 (India)*.

with her employment. Gender equality includes protection from sexual harassment and right to work with dignity.⁴⁸

Women migrant construction workers in Kerala are not paid well. They do not get proper working conditions like sufficient rest, leisure, accommodation and health care as other workers get. They do not get the maternal benefits. The workplace is not safe and healthy for a woman migrant worker. Safe working environment is a part of social security. The discrimination of migrant construction workers in social security rights is the infringement of the principle of equality.

4.4. FREEDOM OF ASSOCIATION AND INTERSTATE MIGRANT CONSTRUCTION WORKERS

Article 19(1) of the Constitution promises six freedoms to the citizens namely freedom of speech and expression, freedom of assembly, freedom to form association, freedom of movement, freedom of residence and freedom of occupation.⁴⁹ The interstate migrant construction workers are seen disadvantaged in respect of freedom of association and freedom of occupation. The rights are not denied to them. But they cannot exercise these rights effectively due to their migrant status.

⁴⁸ *AIR 1997 SC 3011, 3014 (India)*. See also *Apparel Export Promotion Council v A .K. Chopra (1999) 1 SCC 759 (India)*, it was observed that sexual harassment at the work place is the violation of the fundamental right to gender equality and the right to life and liberty.

⁴⁹ Art.19(1) of the Constitution of India

All citizens shall have the right— (a) to freedom of speech and expression ; (b) to assemble peaceably and without arms; (c) to form associations or unions [or co-operative societies]; (d) to move freely throughout the territory of India; (e) to reside and settle in any part of the territory of India (g) to practise any profession, or to carry on any occupation, trade or business.

The right to form association as contained under article 19 (1) (c) protects the right to collective bargaining.⁵⁰ Trade unions play an important role in preventing exploitation of workers.⁵¹ Even the resident workers cannot secure their rights effectively against the powerful employers without the help of associations because the bargaining power of employers are stronger than the workers⁵². The bargaining position of migrant worker is very low compared to that of resident workers. Hence the migrant workers are in greater need of support of associations to protect their rights.⁵³ Majority of the interstate migrant construction workers are not aware of their rights and it is the duty of trade unions to protect the human rights of workers.⁵⁴

The migrant construction labour lack organized strength. They are not adequately represented in trade unions. It is not easy to organize interstate

⁵⁰ Collective bargaining is a flexible process. It is a mutual give and take process for arriving at a solution in a dispute. The purpose is to establish a continuous sound relationship between labour and management. *See generally* R. SIVARETHINA MOHAN, INDUSTRIAL RELATIONS AND LABOUR WELFARE, TEXT AND CASES 282 - 288 (2013) .In *All India Bank Employees Association v The National Industrial Tribunal, Bombay and Others*, AIR1962 SC171,178, AyyangarJ., explained the relevance of right to collective bargaining . “The necessity for this has been arising from an incapacity stemming from the handicap of poverty and consequential lack of bargaining power in workmen as compared with employers which is the raisen d’etre for the existence of labour organization.”

⁵¹ The major activities of trade unions include the protection of job security, safeguarding the interest of workers, maintenance of good working conditions in the organization, developing skills of workers, recognition of worker’s participation in management, maintenance of good industrial relations and amicable settlement of industrial disputes. *See* S.K.BHATIA, STRATEGIC INDUSTRIAL RELATIONS AND LABOUR LAWS 24 (2008).

⁵² The flexible labour practices and deregulation reduce the strength of the trade union activities even for the local workers. Ascendancy of managerial rights, practice of outsourcing, shift to informal nature of employment, casual and contract employment, transfer of jobs from bargainable to non bargainable jobs etc. weakened the collective bargaining power. *See* Alkha.N.Sharma, *Flexibility, Employment and Labour Market Reforms in India*, in GLOBALIZATION AND LABOUR LAWS 163 (Nandini C.P ed., 2007).

⁵³ *See* Jackie Smith, *Economic Globalization and Labour Rights ; Towards Global Solidarity*, in GLOBALIZATION AND LABOUR LAWS 39 (Nandini.C.P. ed., 2007). Globalisation put much pressure on the workers. Due to insecurity of work they are struggling to make a living. Such workers have no capacity to argue for their rights.

⁵⁴ *See generally* K.Ramaswamy J., *Interstate Migrant Labour and Human Rights*, in MIGRANT LABOUR AND HUMANRIGHTS IN INDIA 9-17 (K.Gopal Iyer ed.,2003) .

migrant workers because of their migrant status. They are segregated from the common workforce and lead a secluded life. Another important reason for the apathy of trade unions towards migrant workers is their lack of voting rights in Kerala. Though the migrants speaking same language or hailing from same place live together, that do not make them strong enough to assert their rights. A separate association for migrant workers is not necessary. When they are treated as a part of our society, their working conditions will be improved. The effective utilization of freedom of association will help the migrant construction workers to achieve social security.

4.5. FREEDOM OF OCCUPATION AND INTERSTATE MIGRANT CONSTRUCTION WORKERS

Article 19(1) (g) of the Constitution guarantees that all citizens have the right to practice any profession or to carry out any occupation.⁵⁵ It empowers the migrant construction workers to do any work for their livelihood in a State other than their own. The right to occupation in the territory of India necessarily implies the right of the migrant construction worker to enjoy reasonable conditions of work. They shall get adequate remuneration.

Wages are usually classified in to living wage, fair wage and minimum wage. Fair wage is a mean between the living wage and minimum wage.

The minimum wage is something more than bare minimum or subsistence wage which could be sufficient to cover the bare physical needs of a worker and his family. It is a wage which would also provide

⁵⁵ State can impose reasonable restrictions under art. 19(6) on the exercise of the freedom conferred by art. 19(1)(g).

for the preservation of the efficiency of worker and for some measure of education, medical requirements and amenities.⁵⁶ The living wage should enable the male earner to provide for himself and his family not merely the bare necessities of food, clothing and shelter, but a measure of frugal comfort including education for children, protection against ill health, requirement of essential social needs and a measure of insurance against the more important misfortunes including old age.⁵⁷

The employer cannot pay less than minimum wage to the migrant construction worker on the ground that the worker is ready to work for fewer wages. In *Unichoyi v State of Kerala*,⁵⁸ while dealing with the constitutionality of Minimum Wages Act (1948) on the ground of violation of article 19(1) (g) Court observed that

“In an under developed country which faces the problem of unemployment on a very large scale, it is not unlikely that labour may offer to work even on starvation wages”.

Lower wages lead to lack of social security, income security and lack of other civil rights.⁵⁹ The payment of less than minimum wages and unauthorized deductions from the wages of migrant workers are unconstitutional.⁶⁰

When Constitution guarantees the right to practice any occupation, it should be meaningful. If the migrant worker does not get fair wages and proper

⁵⁶ See *Express Newspapers Ltd v Union of India* AIR 1958 SC 578,602 (India).

⁵⁷ AIR 1958 SC 578,600 (India).

⁵⁸ AIR 1962 SC 12, 17 (India).

⁵⁹ See Dev Nathan, *Structure of Working Class in India*, 22 EPW, No.18, 799, 802 (May 2, 1987).

⁶⁰ In *PUDR v UOI* (1982)2 SCC 494, (India), P.N. Bhagavathy and Baharul Islam JJ. directed the contractors to pay the commissions to the jamamdars (middle men) without deducting it from the minimum wages payable to migrant workers.

working conditions his right will not be meaningful. When migrant worker in the construction sector do not enjoy good working conditions like fair wages, social security rights, rest, leisure, holidays with pay, equality of treatment, good accommodation, health care etc, the Constitutional guarantee of right to profession is denied to them. The migrant construction worker is working hard in the sun, but he is not adequately rewarded.

4.6. FREEDOM OF MOVEMENT & RESIDENCE AND INTERSTATE MIGRANT CONSTRUCTION WORKERS

Article 19 (1) (d) of the Constitution confers the freedom of movement and article 19 (1) (e) guarantees the freedom of residence on citizens. The migrant construction workers have the right to move, settle and reside in any part of India subject to reasonable restrictions. The Government should provide suitable schemes for proper housing of the workers.

In *J.P.Ravidas v Navayuvak Harijan Uthappan Muulti Unit Industrial Co-op Society Ltd* ⁶¹while dealing with a special leave petition K.Ramaswamy and J.B. Pattanaik JJ. reiterated that right to residence and settlement to live with dignity of a person is a fundamental human right.

In international migration, the lack of proper documents makes the migration irregular. The irregular migrants are subjected to gross violation of human rights. In interstate migration, there is no classification as regular migrants and irregular migrants. The freedom of movement is a Constitutional right. They have the right to reside and settle any part of India. There cannot be

⁶¹*AIR 1996 SC 2151(India).*

any kind of unreasonable restriction on the interstate migrants with regard to their stay and movement. Housing facilities of workers are a part of their social security.

4.7. RIGHT TO LIFE AND PERSONAL LIBERTY AND INTERSTATE MIGRANT CONSTRUCTION WORKERS

The society can progress only through the progress of its members.⁶²

The migrant construction worker shall enjoy all the conditions that are necessary for the fullest development of his personality. Article 21 of the Constitution guarantees the right to life and personal liberty of all persons.⁶³ In *Maneka Gandhi v Union of India*,⁶⁴ the Supreme Court has given the widest possible interpretation to the term life and personal liberty. The creative judiciary of India has given Constitutional status to the right to social security and allied rights like right to dignity, right to livelihood, right to shelter, right to health etc under article 21 of the Constitution.

4.7.1. Right to human dignity and interstate migrant construction workers.

The migrant worker is entitled to a decent life. Right to human dignity is an integral part of the right to life guaranteed in the Constitution. In *Francis Coralie Mullin v Administrator, Union Territory of Delhi*,⁶⁵ the Supreme Court has held that the expression life in article 21 does not refer to mere physical or

⁶² See *supra* note 35 at 48.

⁶³ Art.21 of the Constitution of India states that “No person shall be deprived of his life or personal liberty except according to procedure established by law.”

⁶⁴ *AIR 1978 SC 597, 619 (India)*. It was observed that “The fundamental rights represents the basic values cherished by the people of their country since vedic times and they are calculated to protect the dignity of individual and create conditions in which every human beings can develop his personality to the fullest extent.”

⁶⁵ *AIR 1981 SC 746, 753 (India)*. The Bench consisting of Bhagavati and S.Murtaza Fazal Ali JJ. had made important observations on the right to dignity while dealing with rights of detainee under COFEPOSA Act to have interview with his lawyers and family members.

animal existence but embraces something more. Right to life includes the right to live with human dignity and all that goes along with it namely the bare necessity of life such as adequate nutrition, clothing and shelter over their head, and facilities for reading, writing, and expressing oneself in diverse forms, freely moving about, mixing and commingling with fellow human being.

The State has enacted various labour legislations to ensure the dignity of migrant construction workers. Due to poor implementation, the migrant workers do not get the benefit of welfare laws. In *Bandhua Mukthi Morcha v Union of India*⁶⁶ while dealing with bonded labour, it was held that non implementation of welfare provisions to secure right to live with dignity amount to violation of article 21 of the Constitution.

“Right to live with dignity include protection of health and strength of workers, men and women and of tender age of children against abuse, opportunities and facilities for children to develop in healthy manner, educational facilities, just and human conditions of work, maternity relief etc.”⁶⁷ If a person has no freedom to select his job there is no human dignity.⁶⁸ Poverty compels the migrant construction worker to accept unfavourable terms of work. It is the violation of right to dignity of migrants.⁶⁹

⁶⁶ AIR 1984 SC 802 (India).

⁶⁷ AIR 1984 SC 802, 811 (India). Right to live with human dignity enshrined under art. 21 derives its life breath from arts. 39 (e), (f), 41 and 42.

⁶⁸ See S.K.SINGH, BONDED LABOUR AND LAW 157 (1994).

⁶⁹ In *Neeraja Chowdhary v State of M.P (1984) 3 SCC 243, 245 (India)*, while dealing with the bonded migrant labour, Bhagavathi J., observed that

It is obvious that the poverty by our curse inflicted on large masses of people by our malfunctioning of socio-economic structure and it has the disastrous effect of eroding the soul and sapping the moral fibre of a human being by robbing him of all basic human dignity and destroying him the higher values and finer susceptibilities which go to make up this wonderful creation of god upon the earth namely man.

A welfare State has the duty to secure the dignity of its workers.⁷⁰ Right to dignity of a migrant construction worker require social security, just and humane conditions of work, leisure, minimum standard of health, economic security, protection of youth, childhood and motherhood, educational facilities, adequate nutrition, clothing, shelter, facilities for reading, writing, freedom of expressing oneself in diverse forms, free movement and interaction with fellow human being etc.

4.7.2. Right to livelihood and interstate migrant construction workers

According to G.S. Singhvi J.,

“If a man is deprived of his livelihood, he is deprived of all his fundamental and Constitutional rights and for him the goal of social and economic justice, equality of status and opportunity and of freedoms enshrined in the Constitution remain illusory.”⁷¹

Right to livelihood is a component of right to meaningful life and social justice of an interstate migrant worker. In *Olga Tellis v Bombay Municipal Corporation*⁷², the Court held that the right to life includes the right to livelihood. Referring to the directive principles of state policy contained in articles 39(a), 37, and 41 court observed that if the directive principles obliges the State to secure to the citizens an adequate means of livelihood and the right

⁷⁰ In *Y.A. Mamarde V Authority under the Minimum Wages Act (1972) 2 SCC 108, (India)*, while interpreting the Minimum Wages Act, Dua J., observed that “Under our present Constitution, the State is now expressly directed to endeavour to secure to all workers (whether industrial, agricultural or otherwise) not only bare physical subsistence but a living wage and conditions of work ensuring a decent standard of life and full enjoyment of leisure.”

⁷¹ See *Harjinder Singh v Punjab State Warehousing Corporation (2010) 3 SCC 192, 210 (India)*. Appeal was filed against order of retrenchment made by Punjab State Ware Housing Corporation.

⁷² *AIR 1986 SC 180, 194 (India)*.

to work it would be sheer pedantry to exclude the right to livelihood from the content of right to life. Chandrachud J., observed that

Deprive a person of his right to livelihood and you shall have deprived him of his life. Indeed that explains the massive migration of rural population to big cities. They migrate because they have no means of livelihood in their village. The motive force which propels their desertion of their hearths and homes in the village is the struggle for survival that is the struggle for life.⁷³

Migration of construction workers to Kerala itself is the result of loss of livelihood in the home village. The wages earned by the migrant worker shall enable him to support himself and his family. Otherwise it is a contravention of article 21 of the Constitution. State shall provide social security measures to meet the unforeseen contingencies. State cannot justify its failure to provide livelihood to weaker section of the society like migrant population on economic grounds. The State shall prioritize the requirements.

4.7.3. Right to shelter and interstate migrant construction workers

Right to shelter is held to be a fundamental right under article 21 of the Constitution. In *Santisar Builders v Narayanan Khimalal Totame*⁷⁴, Ranganatha Misra J., held that

The right to life would take within its sweep the right to food, right to clothing, right to decent environment and a reasonable accommodation

⁷³ In *Centre for Environment and Food Security v Union of India*, (2011) 5 SCC 676, (India). Supreme Court reiterated that right to livelihood is an integral part of right to life. The writ petition was filed seeking directions for formulating schemes and funds for proper implementation of National Rural Employment Guarantee Act.

⁷⁴ (1990)1 SCC 520 (India).

to live in. The difference between the need of an animal and a human being for shelter has to be kept in view. For an animal it is the bare protection of the body, for a human being it has to be a suitable accommodation which allows him to grow in every aspect- physical, mental and intellectual.⁷⁵

In *Chameli Singh v State of U P*, Supreme Court observed that

Shelter for human being is not a mere protection of his life or limb. It is home where he has opportunities to grow physically, mentally, intellectually and spiritually. Right to shelter therefore includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities like roads etc so as to have easy access to his daily avocation. The right to shelter does not mean a mere right to a roof over ones head but right to the entire infrastructure necessary to enable them to live and develop as a human being.⁷⁶

The employers and the contractors are not discharging their duty to provide suitable accommodation to migrant workers in Kerala. The Kerala High Court warned the contractors and employers in providing unhygienic accommodation to migrant workers.

⁷⁵ (1990)1 SCC 520,527 (India).

⁷⁶ AIR 1996 SC 1051, 1053 (India).

In *Jose M.A. v Vadavukodu Puthencruz Grama Panchayath and Others*,⁷⁷ K. Vinod Chandran J., observed that

The migrants most of whom living in abject poverty are lured by the prospect of regular employment and bare living wages (not capable of being called decent) as compared to what they could earn in their native States. The employers have cheap labour as against what is demanded by the locals who have better awareness by virtue of higher literacy rates and proliferation of trade union activities. It is in the interest of such contractors and employers that the migrants are kept insulated from the locals and hence the cloistering in dismal conditions.

Housing facilities are one of the basic necessities of an interstate migrant construction worker because he is living in a foreign place. Both the employers and contractors are neglecting their statutory duty to provide suitable accommodation to the migrant workers. The shelter is more than mere roof. The shelter shall contain sufficient facilities for the development of the worker. There shall be sufficient light, fresh air, fresh water, toilets, urinals, bathing facilities and clean surroundings. The migrant construction workers in Kerala are not provided with reasonable shelter. It is a contravention of

⁷⁷ 2016 (3) KHC 498, 505 (India) (paragraph 16) & (paragraph 10). The High Court appointed a commission to report the housing conditions of the migrant workers. Migrant workers were using water from bore-well situated about 3.8 feet from the pits collecting faecal wastes. No septic tanks were provided for disposal of faecal wastes and same was collected from the toilets in five open pits in the property. The water of the well of the neighbours (the petitioners) became very dirty and contaminated due to the faecal wastes of migrant laborers. The wastes were discharged in to the public drainage system.

meaningful life guaranteed under article 21 of the Constitution and right to social security.

4.7.4. Right to health and interstate migrant construction workers

The migrant construction worker has the right to be healthy. They experience many difficulties in accessing health care.⁷⁸ Right to health is a broad concept. It includes both freedom and entitlement.⁷⁹ Right to health care includes the protective part of right to access to health care and facilitative part of the right to access to health care.⁸⁰ The migrant construction worker has the right to promotion of good health and prevention of ill health. The State has a facilitative role to provide health care to migrant workers at affordable cost. Right to meaningful life under article 21 includes right to health.⁸¹ It includes

⁷⁸ See Ministry of Housing and Urban Poverty Alleviation, Paragraph 88 of the Report of the Working Group on Migration 32 (2017).

Health care utilisation rates among migrants remain poor due to a number of factors : expensive private health facilities, conflict between time of work and availability of medical practitioners, cost of missing hours or days of work, long distance to access services and associated problems of transportation, perceived alienation from government health systems at the destination and language difficulties.

⁷⁹ See Paragraph 8 of the General Comment No.14 of the Committee on Economic, Social and Cultural Rights, on Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights, E/C.12/2000/4 dated 11/8/2000.

The right to health is not to be understood as a right to be healthy. The right to health contains both freedom and entitlements. The freedom includes the right to control one's health and body, including sexual and reproductive freedom and the right to be free from interference, such as right to be free from torture, non consensual and medical treatment and experimentation. The entitlements include the right to a system of health protection which provides equality of opportunity of people to enjoy highest attainable level of health.

⁸⁰ See Bismi Gopalakrishnan, *Conceptual Foundations of Access to Health Care*, 35 CULR, 35, 36 (2012).

⁸¹ See *Calcutta Electricity Supply Corporation Ltd v Subhash Chandra Bose*, (1992) ISCC 441,462-463 (India). Court held that right to health is a fundamental right under art. 21 of Constitution. Medical facilities are a part of right to social security.

protection from health hazards at workplace. In *Consumer Education & Research Center v Union of India*⁸², the Supreme Court observed that

Compelling economic necessity to work in an industry exposed to health hazards due to indigence to bread winning himself and his family should not be at the cost of the health and vigour of workman. The facilities for medical care and health against sickness ensures stable man power for economic development and would generate devotion of duty and dedication to give the workers best physically as well as mentally in production of goods and services.

Sexual and reproductive health care services shall be made affordable to women.⁸³ Right to medical benefit to a worker is a fundamental right.⁸⁴ Fresh environment is a component of right to healthy life. If there is no fresh environment for migrant workers to live in, there will not be any quality of life.⁸⁵ Hygienic environment is an integral facet of the right to healthy life as it is not possible to live with human dignity without a humane and healthy

⁸² *AIR 1995 SC 922, 940 (India)*. The occupational diseases faced by the workers in the Asbestose industries were considered by the Supreme Court. It was held that right to health and medical care to protect health and vigor while in service or post retirement is a fundamental right of a worker under art. 21 read with arts.39(c), 41, 43 and 48 (a) of the Constitution and all other related articles and fundamental human rights to make life of a workman meaningful and purposeful with dignity of a person. *See also Kirloskar Brothers Ltd v ESI Corporation (1996)2 SCC 682 (India)*.

⁸³ There shall be measures for the prevention and treatment of diseases affecting women. *See* Paragraph 21 of the General Comment No.14 of Committee on Economic, Social and Cultural Rights, on Substantive Issues arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights , E/C.12/2000/4 dated 11/8/2000.

⁸⁴ *Regional Director, ESIC v Francis Decosta, (1993) Supp (4) SCC 100, 105 (India)*. Ramaswamy J., observed that right to health is a fundamental human right standard enshrined in socio economic justice of our Constitution and UDHR.

⁸⁵ In *Subhash Kumar v State of Bihar, AIR 1991 S C 420 (India)*, the apex court held that enjoyment of pollution free environment is included in the right to life under art.21.

environment.⁸⁶ The migrant worker has the right to work and live in a fresh atmosphere.

Right to health is an inseparable aspect of right to social security of migrant construction workers. The chances of contracting occupational diseases and employment injuries are more in construction than in any other business. The health problems of migrant construction workers are aggravated by the unhealthy accommodation and mal nutrition.

The State as well as the employer has the Constitutional obligation to protect the health of a migrant construction worker .The worker and family is entitled to periodic check up, medical supervision and free medical care. There shall not be any arbitrary treatment in providing health care to migrants. The migrant women workers require special care and protection. The health policy shall cover the entire life span of the worker and his family. Right to health care includes the access to essential drugs and affordable health care. There shall be access to fresh water, hygienic food and health related information. Interstate migrant construction worker can be productive only when he is healthy.

⁸⁶ See *supra* note 4 at 1138. See also *Occupational Health and Safety Association v Union of India and others (2014) 3 SCC 547,551(India)*. The petitioner, a nonprofit occupational health and safety organization filed writ petition under art. 32 seeking direction of mandamus to direct the respondent to frame guidelines with respect to occupational safety and health regulation for thermal power plants. Radhakrishnan J., observed that “Right to live with human dignity enshrined in art. 21 derives its life breath from directive principles of state policy, particularly clause (e) and (f) of arts. 39, 41 and 42. Those articles include protection of health and strength of workers and just and humane condition of work.”

4.7. 5. Right to social security and interstate migrant construction workers

In *CESC Ltd v Subhash Chandra Bose*,⁸⁷ Ranganatha Misra CJ., observed that

“Right to social justice is a fundamental right. The health and strength of a worker is an integral facet of right to life. To the tillers of soil, wage earners, labourers, wood cutters, the civil and political rights are mere cosmic rights”.

In *LIC of India v Consumer Education & Research Centre*⁸⁸, K.Ramaswamy J., observed that social security is a facet of socio economic justice to people and a means of livelihood.⁸⁹

In *Consumer Education & Research Centre v. Union of India*⁹⁰ K.Ramaswamy J., stated that

Social security, just and humane conditions of work and leisure to workmen are part of his meaningful right to life and to achieve self expression of his personality and to enjoy the life with dignity. The State should provide facility and opportunities to them to reach at least minimum standard of health, economic security and civilized living while sharing according to the capacity, social and cultural heritage.

Social security is based on social justice and human dignity of an individual. Social justice, human dignity and social security are essential facets of a meaningful life under article 21 of the Constitution. Hence the violation of

⁸⁷ (1992) 1SCC 441, 462 (India). Court was dealing with the applicability of ESI Act to the employees of Calcutta Electricity Supply Corporation.

⁸⁸ (1995) 5 SCC 482 (India). Court analysed the Constitutionality of certain contractual terms in LIC policies.

⁸⁹ (1995) 5 SCC 482, 510 (India).

⁹⁰ AIR 1995 SC 922, 938 (India).

social security rights of interstate migrant workers is a violation of their fundamental rights.

4.8. RIGHT TO EDUCATION AND INTERSTATE MIGRANT CONSTRUCTION WORKERS

Children are involved in the migration process in different ways. They may accompany their parents, left behind by parents or migrate independently. Migration always brings hardships to poor children.⁹¹ They are devoid of the benefits of child hood especially the right to education. Child labour is one factor that leads to the deprivation of right to education of children.⁹²

In the opinion of the Committee on Economic, Social and Cultural Rights,

Education is both a human right in itself and an indispensable means of realizing other human rights. As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities. Education has a vital role in empowering women, safeguarding children from exploitative and hazardous labour and sexual exploitation and promoting human rights.⁹³

⁹¹ See ILO, INTERNATIONAL LABOUR MIGRATION, RIGHTS BASED APPROACH 98 (2010).

⁹² In *Bandhu Mukthi Morcha v Union Of India* (1997)10 SCC 549 (India), while dealing with child labour, Court held that“ Steps should be taken to provide compulsory education to all children either by industries itself or in coordination with it by the State Government to children employed in factories, mine or any other industries organized or unorganized.”

⁹³ See Paragraph 1 of General Comment No.13 of the Committee on Economic, Social and Cultural Rights, on the Right to Education art. 13 of the Covenant, E/C.12/1999/10 dated 8/12/1999.

Right to free and compulsory education of children up to 14 years of age was a directive principle of state policy under article 45 of the Constitution. The education of children of the age of 6 to 14 is free and compulsory.⁹⁴ The migrant children who accompany their parents could not continue their education due to frequent changes in residence.⁹⁵ The language barriers and different administrative systems pose difficulty in the education of migrant children.⁹⁶ They do not get adequate support from the home State or State of employment.⁹⁷

The children of migrant construction workers in Kerala face many difficulties in getting education. The children from the poor house hold are forced to work for their livelihood. They also find it difficult to adapt with the local language. Providing educational facility to migrant children is essential to raise the social and economic security of interstate migrant construction workers.

⁹⁴ Art. 21A of the Constitution of India “The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine”. The Parliament has enacted the Right of Children to Free and Compulsory Education Act (2009) to give effect to the constitutional obligation. The 86th amendment Act (2002) inserted art.21A of the Constitution.

⁹⁵ See NCEUS, Paragraph 6.25 of the Report on Conditions of Work and Promotion of Livelihoods in the Unorganized Sector 98 (2007). “Lack of a permanent residence often adversely affects education prospects of the children of the migrant workers who in the process are deprived of even the basic elementary education.”

⁹⁶ See Paragraph 113 of the Report of Working Group on Migration 39 (2017). “Wherever possible, the State should explore the possibility of establishing functioning schools in the destination and a cadre of multi-lingual teachers, who can assist in the transition from the mother tongue to the State language.”

⁹⁷ See generally S.N.TRIPATHY & C.R.DASH, MIGRANT LABOUR IN INDIA 36-54 (1997).

4.9. FREEDOM FROM FORCED LABOUR AND INTERSTATE MIGRANT CONSTRUCTION WORKERS

The interstate migrant construction workers have the right to be protected from exploitation. Exploitation violates the right to equality, liberty and dignity of life. The person in dominant position subordinates and exploits the weak person. Ultimately it is the result of social and economic inequalities of life.⁹⁸ Forced labour takes many forms.⁹⁹ The slavery in the ancient period was a form of forced labour. The human beings were treated as mere commodities and sold in the market. In the modern age it appears in different forms. The migrant labour in inhuman conditions can be treated as a kind of forced labour.¹⁰⁰

Article 23(1) prohibits forced labour, begar and traffic in human being.¹⁰¹ Begar is compulsory work without any payment.¹⁰² Traffic in human

⁹⁸ Slavery, forced labour, traffic in human beings and child labour can be abolished only through social empowerment. *See supra* note 37 at 339.

⁹⁹ “Forced labour is the utilization of persons for one’s own end and it is opposed to the dignity of individual and to directive principles of state policy.” *See* 2 H.M. SEERVAI, CONSTITUTIONAL LAW OF INDIA 1234 (2008).

¹⁰⁰ *See* Anibel Ferus Comelo, *Migration and Precariousness, Two Sides of the Contract Labour Coin*, No. 36, XLIX EPW 39, 42 (Sept. 6, 2014). A study of security workers in Goa was reported. The study revealed the exploitation made by recruiting agency on migrant workers. They charged deposits for uniforms and paper works. They withheld the identity cards and other important employment related information and documents such as their PF account numbers. They were never given continuous employment which would legally qualify them for employment benefits.

¹⁰¹ Art. 23 of the Constitution of India states that “Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law”.

¹⁰² *See* the speech of Prof. K .T. Shah in the Constituent Assembly, Constitutional Assembly Debates, Vol.VII, 804-805. Sri Raj Bahadur opined that “The beggar has been a blot in the humanity and has been a denial of all that is good and noble in human civilization. Through centuries this curse has remained as a dead weight on the shoulders of common man like the practice of slavery.” Constitutional Assembly Debates, Vol.VII, 809-810.

being means selling and buying the human beings as if they are chattels. The female migrant workers require special protection from trafficking.¹⁰³

The term forced labour was widely interpreted by the Supreme Court in *Peoples Union for Democratic Rights v Union of India*.¹⁰⁴ The Supreme Court observed that every form of forced labour is within the prohibition of article 23 whether the worker gets remuneration or not.¹⁰⁵ Bhagavathy J., has observed that

The word force must therefore be construed to include not only physical force or legal force but also force arising from the compulsion of economic circumstances which leaves no choice of alternatives to a person in want and compels him to provide labour or services even though remuneration received for it is less than the minimum wage. Where a person is suffering from hunger or starvation, when he has no resources at all to fight disease or to feed his wife and children or even to hide their nakedness, where utter poverty has broken his back and reduced him to a state of helplessness and despair and where no other employment is available to alleviate the rigour of his poverty, he would

¹⁰³ See H.E.Sheikha Haya Rashed Al Khalifa, *Chair Persons Summary of the UN General Assembly High Level Dialogue on International Migration and Development* 40 IMR, No.4, 966, 970 (Winter 2006).

¹⁰⁴ *AIR 1982 SC 1473 (India)*. In this case a public interest litigation was filed challenging the nonpayment of minimum wages to various workers employed by contractors in Asiad projects in Delhi and the nonobservance of various labour laws like the Contract Labour (Regulation and Abolition) Act (1970), Minimum Wages Act (1948), Equal Remuneration Act (1976), Employment of Children Act (1938), Interstate Migrant Workmen (Regulation of Employment and Conditions of Service) Act (1979) etc.

¹⁰⁵ *AIR 1982 SC 1473, 1488 (India)*.

have no choice but to accept any work that comes in his way, even if the remuneration offered is less than the minimum wage.¹⁰⁶

State has the duty to provide minimum wages to its employees. In *Sanjith Roy v State of Rajasthan*,¹⁰⁷ Court observed “No work of utility and value can be allowed to be constructed on the blood and sweat of persons who are reduced to a state of helplessness on account of drought and scarcity conditions.”¹⁰⁸

In *Peoples Union for Democratic Rights v Union of India and others*,¹⁰⁹ a writ petition was filed against the violation of labour rights of construction workers engaged in the preparation of common wealth games majority of whom were interstate migrant workers.¹¹⁰

¹⁰⁶ AIR 1982 SC 1473, 1490 (India), Paragraph 15. The workers were in virtual bondage of the contractors. They were surrounded by armed thugs and not allowed to move. A number of workers were died or injured at the worksite. See also Imrana Quadeer & Dunu Roy, *Work, Wealth and Health; Sociology of Workers Health in India*, 17 SOCIAL SCIENTIST, No 5/6, 45, 60 (May-Jun. 1989).

¹⁰⁷ AIR 1983 SC 328, 333 (India). The State Government was paying less than minimum wages to the unskilled workers employed in famine relief work by relying on the provisions of The Rajasthan Famine Relief Works Employees (Exemption from Labour Laws) Act (1964). See also *Rohit Vasavada v General Manager IFFCO*, AIR 1984 Guj.102, 109. (India). Workers were to handle urea manually without adequate safeguards and were not paid proper wages. They were not given passes to go out. P.N.Poti J., held that “Economic compulsion may persuade workman to work under conditions different from those envisaged in the labour laws and merely because they are working not under any physical restraint, will not make it other than forced labour.”

¹⁰⁸ See *Kapila Hingorani v State of Bihar*, (2003) 6 SCC 1(India). It was held that nonpayment of wages for years amount to forced labour. Financial stringency of the employer will not justify the violation of fundamental rights.

¹⁰⁹ WP(C) 524/2012. The writ petition was filed for the enforcement of provisions of welfare legislations for the safety and health of the workers like Building and other Construction Workers Welfare ct (1996), Inter State Migrant Workmen Act (1979) and Minimum Wages Act (1948).

¹¹⁰ See PUDR Team, *Violation of Workers’ Right at Common Wealth Games Construction Site*, 44 EPW, No.24, 10-12 (Jun. 13-19, 2009). The report unravels the miserable life of migrant workers who were employed for the construction of common wealth games at Delhi.

The protection guaranteed under article 23 of the Constitution can be enforced against private individuals also.¹¹¹ In *Ram Niwas v Union of India*,¹¹² the Court observed that

“The fundamental right bestowed by article 23 of the Constitution is enforceable not only against the State, but also against the whole world.”

Forced labour denies income security, employment security and decent work. The broad interpretation of the term forced labour is applicable to the marginalized sections like interstate migrant construction workers in Kerala.

If a migrant worker is coerced to do any job without any remuneration or forced to accept hazardous job in the construction sector due to his financial problems, or work for less than minimum wage it is considered as forced labour. The fact that he receives some wages is immaterial because there is no other choice for the migrant. There is no free consent of worker. Economical compulsion on the migrant construction worker is considered as the force on him.

Article 23 can be enforced against private employers and contractors employing construction workers. In the *Asiad* case¹¹³ and the *Common Wealth Game Case*¹¹⁴, the principal employer was the State itself. The migrant construction workers were treated like animals.

¹¹¹ See *supra* note 16 at 51.

¹¹² *2010 (4) AD (Del). 281 DB (India)*. “Art.23 has genesis in the socio economic conditions of the people at the time the Constitution was enacted, with a view to ensure socio and economic justice to the large masses of people living in abject poverty, destitute and slavery.”

¹¹³ *AIR 1982 SC 1473 (India)*.

¹¹⁴ *WP (C) 524/2012*.

4.9.1. Bonded labour and interstate migrant construction workers

Bonded labour is a form of forced labour. There is an element of force in the form of debt.¹¹⁵ The roots of bonded labour system can be traced back to the social stratification and discrimination prevalent in India on the basis of caste system.¹¹⁶ The untouchable castes, tribals, women and children are the chief victims of bonded labour.¹¹⁷ The bonded workers come from the lowest strata of society. The employers have ownership and control over land in rural areas.¹¹⁸ The poor workers do not possess sufficient land or assets for their survival and subsistence.

A migrant worker in debt bondage faces adverse working conditions.¹¹⁹ Bonded labour cannot sell his labour at market price.¹²⁰ His labour mobility is

¹¹⁵ See *Supra* note 68 at 15-20.

¹¹⁶ See Jaya Ram Panda, *Bonded Labour in a Semi Feudal, Semi Capitalist – Society*, in SOCIAL POLICY, LAW AND PROTECTION 616-625 (D.N.Saraf ed., 1986). He argues that migration of labour or dadan system is a product of semi feudal system.

¹¹⁷ See RAVI. S. SRIVASTAVA, BONDED LABOUR IN INDIA, ITS INCIDENCE AND PATTERN 9 (2005).

¹¹⁸ See Y.R. HARGOPAL REDDY, BONDED LABOUR SYSTEM IN INDIA CAUSES, PRACTICES, THE LAW 23- 30 (1995). The perpetuation of bonded labour system could be traced to economic compulsions arising out of unemployment, indebtedness and rural poverty coupled with caste system, social customs and traditions.

¹¹⁹ See NCEUS, Paragraph 6.54 of the Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector 107(2007).

Bonded labourers work under extremely restricted work environment. They are at the mercy of the employer who exploits them economically and physically with no commensurate returns. Their economic freedom is curtailed entirely and they have no means to break-free and redeem their situation. Having no power to organise themselves, their miserable conditions are perpetuated and extended to their family members.

¹²⁰ See *Supra* note 40 at 33. See also David Moss, Sanjeev Gupta & Vidya Shah, *On the Margins in the City : Adivasi Seasonal Labor Migration in Western India*, 40 EPW, No 28, 3025, 3027 (Jul. 9-15, 2005). The tribal people were forced to borrow money from money lenders who levy exorbitant interests. They had no means to pay back the money and interest accrued on it and entered in to debt bondage. The adivasis were made to work hard for the creditors for a long time. They had to suffer long working hours, harsh conditions, injury, social isolation and humiliation. They often slept at open places and faced the threats of theft, forcible eviction by police, harassment, abuse etc. The contractors deducted the cost of provision or food from wages. At the end they had to return home with empty hands.

restricted.¹²¹ The Parliament has enacted the Bonded Labour System Abolition Act in the year 1976.¹²²

Majority of the interstate workers has taken advances from the contractors and entered in to debt bondage.¹²³ Debt bondage of migrant worker leads to forced labour. In *Bandhua Mukthi Morcha v Union of India*,¹²⁴ Court considered the inhuman life of the bonded labourers employed in stone quarries in Faridabad district near the city of Delhi. It was observed that whenever it is shown that a worker is made to provide forced labor, Court would raise a presumption that he is a bonded worker. Bhagavathy J., observed that,

“System of bonded labour is a gross violation of Constitutional values, egalitarian socio economic order and basic human dignity.”¹²⁵

The debt bondage affects the worker as well as his family. The family members cannot seek any employment without the permission of the master. The miserable life of bonded workers and their family in stone quarries in the State of Haryana was considered by the Supreme Court in *Bandhua Mukthi*

¹²¹ See JAN BREMAN, AT WORK IN THE INFORMAL ECONOMY OF INDIA, A PERSPECTIVE FROM THE BOTTOM UP 81 (2013).

¹²² § 2(g) of the Bonded Labour System Abolition Act (1976) defines the term “Bonded labour”.

¹²³ In *Mukesh Advani v State of M.P.*, (1985) 3 SCC 162, (India). The gross exploitation practiced on the migrant bonded labourers from Tamil Nadu who were working in Madhya Pradesh was brought to the attention of the Court. An advance of Rs, 1000/- was given to the workers by the contractors. The amount will be deducted from wages. But the accounts were manipulated in such a way that the amount was not paid full and it was increased on completion of the work. Desai J., opined that “State must interpose between these two unequal to eschew competition.” (1985) 3 SCC 162, 163 (India).

¹²⁴ AIR 1984 SC 802, 850 (India). Some of the bonded workers were interstate migrant workers. The Court has given instructions for the release and rehabilitation of the bonded labourers.

¹²⁵ (1984) 3 SCC 161, 173 (India).

Morcha v Union of India.¹²⁶ Bhagavathy J., had narrated the life of the workers in the following words

These poor unfortunate workmen who lead a miserable existence in small hovels, exposed to the vagaries of weather, drinking foul water, breathing heavily dust laden polluted air and breaking and blasting stone all their life may one day be able to realise that freedom is not only the monopoly of a few but belongs to them all and that they are equally entitled along with others to participate in the fruits of freedom and development.¹²⁷

The bonded labourers were paid only nominal wages and often their family members were not permitted to take remunerative jobs outside without the permission of master. Normally such permission is not granted and impoverished condition is allowed to continue to the advantage of the creditor.¹²⁸

A bonded worker is deprived of his dignity which is guaranteed under article 21 of the Constitution, because he is merely a feudal property of the creditor.

¹²⁶ (1991) 4 SCC 177(India). A letter was addressed to the Supreme Court complaining about the prevalence of bonded labour system in stone quarries in the State of Haryana. Court appointed two advocates commissions to study and file reports, on working conditions particularly with reference to violation of the provisions of Bonded Labour System (Abolition) Act (1976) and Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act (1979) and also appointed a committee to study the matter. The Court directed the State Government to take steps for rehabilitation of interstate migrant bonded laborers who were released from bonded labour.

¹²⁷ (1991) 4 SCC 177, 180-181(India).

¹²⁸ (1991) 4 SCC 177, 187(India).

In *Neeraja Choudhary v State of Madhya Pradesh*¹²⁹, Bhagavathy J., observed that,

Bonded Labour System (Abolition) Act (1976) has been enacted with a view to ensuring the basic human dignity to the bonded labour and any failure of action on the part of the State in implementing the provisions of this Act is the violation of articles 21 and 23 of Constitution.

There shall be proper identification and rehabilitation of the bonded workers.¹³⁰ When migrant construction labour or any member of his family borrow some money from the contractor or the employer to meet any expenses, the debt bondage begins. The worker could not repay the amount and interest within the time stipulated. It may take even generations to repay the debt. He is forced to work for creditors without proper wages. He has to suffer bad conditions of work.

The bonded migrant workers are deprived of the freedom of employment, fair conditions of work and social security. Bonded labour violates the inherent dignity and basic rights of a worker.

¹²⁹ *AIR 1984 SC 1099 (India)*. The writ petition revealed the pathetic conditions of the freed bonded labourers who were not rehabilitated by the State of Madhya Pradesh as per the provisions of the Bonded Labour System (Abolition) Act (1976). They were living in utter poverty and starvation.

¹³⁰ *AIR 1984 SC 1099, 1106 (India)*. A.N. Sen J., observed that “If any bonded labourer is only freed from bondage and is set at liberty, he will in all probability have to slide back to the bondage again to keep his body and soul together.” In *Peoples Union For Civil Liberties v State of Tamil Nadu (2013)1 SCC 585*, the Supreme Court issued certain directions to the NHRC to monitor and oversee the provisions of the Bonded labour Act and various directions of the court with regard to the identification and rehabilitation of migrant bonded labour, starting prosecution against employers, effective prosecution under the Act etc. *See also Peoples Union For Civil Liberties v State of Tamil Nadu (1994)5 SCC 116, Peoples Union For Civil Liberties v State of Tamil Nadu (2004)12 SCC 381, Peoples Union For Civil Liberties v State of Tamil Nadu (2013) 1 SCC 596*, etc.

4.10. FREEDOM FROM CHILD LABOUR AND INTERSTATE MIGRANT CONSTRUCTION WORKERS

Child labour is one of the serious forms of exploitation of children.¹³¹ Most of the child labour is found in agriculture and other hazardous industries.¹³² It is rampant among migrant workers in the construction sector. The employers prefer child workers because they are available at cheap wages and never complain.¹³³

Migrant children are more vulnerable to trafficking and exploitation. Girls face the threat of forced prostitution.¹³⁴ Family debt, large size of the family, low family income, nonavailability of employment in villages are some of the reasons for child migration.¹³⁵

There is no complete prohibition of child labour.¹³⁶ It prohibits child labour below fourteen years in hazardous industries.¹³⁷

The Child Labour (Protection and Regulation) Act (1986) contains a list of occupation in which children cannot be employed.

¹³¹ In *Gaurav Jain v Union of India* (1997) 8 SCC 114, 135(India). K. Ramaswamy J., observed that “Children of the world are innocent, vulnerable and dependant. They are all curious, active and full of hope. Their lives should be full of joy and peace, playing, learning and growing. Their future should be shaped in harmony and cooperation.”

¹³² See generally Ishita Chatterjee, *A Critical Study of the Human Rights of Child Labour* LAB IC 65-72(2015).

¹³³ See generally MOHAMMED MUSTAFA & ONKAR SHARMA, *CHILD LABOUR IN INDIA, A BITTER TRUTH* 1– 4 (1997).

¹³⁴ See *supra* note 91 at 98.

¹³⁵ See B.K.SHARMA&VISHWA MITTAR,*CHILD LABOUR AND URBAN INFORMAL SECTOR* 83-84 (1990).

¹³⁶ In *Salal Hydroelectric Project v State of Jammu & Kashmir* (1983) 2 SCC 181,19 (India) Court observed that the child labour was not abolished by Constitution altogether because of prevailing social and economic conditions

¹³⁷ Art.24 of the Constitution of India.

Construction is a hazardous industry.¹³⁸ Child labour amounts to wastage of productive resources from an economic point of view.¹³⁹ It leads to early adulthood, juvenile delinquency, child trafficking, migration and economic inequality. It suppresses the mental as well as physical development of children.¹⁴⁰ In *Bandhu Mukthi Morcha v Union Of India*,¹⁴¹ Supreme court held that a child can develop to be a responsible and productive member of the society only through an environment which is conducive to his social and physical health. Every nation links its future with the status of the child.

Child labour is an indication of poverty of the households and poor education.¹⁴² There shall be measures to reduce poverty and to increase the incentives of education.¹⁴³ Migrant children are found employed in both hazardous and nonhazardous employment. Article 24 of the Constitution

¹³⁸ In *Peoples Union for Democratic Rights v Union Of India*, (1982) 3 SCC 235 (India) Supreme Court pointed out that though construction industry is not included in the schedule of the Employment of Children Act (1938), no child can be employed in any construction work and the Union and the State Government must ensure that the constitutional mandate is not violated in any part of the country. See also *Sriramababu v Chief Secretary, Govt of Karnataka*, ILR (1997) Kar.2269 (India). The Court observed “All employments which cripple the health of child and which disable him from being a healthy member of the society should be treated as a hazardous industry.”

¹³⁹ In *Bandhu Mukthi Morcha v Union Of India*, (1997)10 SCC 549 (India), the Court considered the child labour in carpet weaving industries. Supreme Court observed that “Neglecting the children means loss to the society as a whole. If the children are deprived of their childhood socially, economically, physically and mentally the nation gets deprived of the potential human resources for social progress, peace and order, the social stability and good citizenry.” See also A.N.Sadhu & Amarjith Singh, *Socio-Economic Aspect of Labour in India*, in SOCIAL POLICY, LAW AND PROTECTION OF WEAKER SECTIONS OF SOCIETY 627-628 (D.N.Saraf ed.,1986). The innovative ability, intellectual capacity and creative potential of a child who was forced to work at his tender age will be much less than that of a normal child.

¹⁴⁰ See MALIK & RAVAL, LAW AND SOCIAL TRANSFORMATION IN INDIA 216 (2017).

¹⁴¹ AIR 1984 SC 802(India).

¹⁴² See J.Mahalekshmi, *Child Labour in India, Issues and Challenges*, 4 LLJ, 17, 18 (Dec.2014).

¹⁴³ See S.S.P.Sharma, H.K.Swain & Pramod Kumar. *Labour Standard and Poverty in India : Emerging Issues*, 41 IJLE,No.4, 1021,1024 (1998). The Government shall introduce poverty eradication programs and opportunities for quality education.

should be read along with article 21A of the Constitution. The former prohibits the employment of children below the age of 14 years in factories and hazardous industries. The latter obliges the State to provide free and compulsory education to the children below 14 years. The intention of the legislature is that the children should be sent to school and not to any workplace. Protection of childhood is an aspect of social security. If the migrant's parents are provided with sufficient social protection, the child labour can be abolished.

4.11. DIRECTIVE PRINCIPLES OF STATE POLICY AND INTER STATE MIGRANT CONSTRUCTION WORKERS

The directive principles of state policy lays down the guidelines for the State legislation and administration.¹⁴⁴ The social and economic rights of migrant workers especially the right to social security is mentioned in directive principles of state policy. Though these principles are non justiciable in nature, they are no less important in a welfare State like India.¹⁴⁵ Dr. Ambedkar while moving the Draft Constitution in the Constituent Assembly had observed that for the nonobservance of the directives, the ruling party would be answerable not in a court of law but before the electorate.¹⁴⁶

¹⁴⁴ See DURGA DAS BASU, INTRODUCTION TO THE CONSTITUTION OF INDIA 139 (1995).

¹⁴⁵ See Art.37 of the Constitution of India.

¹⁴⁶ Constitutional Assembly Debates, Vol.VII , 41.

If it is said that the Directive principles has no legal force behind them, I am prepared to accept it. But I am not prepared to admit that they have no sort of binding force at all. Nor I am prepared to concede that they are useless because they have no binding force in law. Whoever captures power will not be free to do what he likes with it. In the exercise of it, he will have to respect these instruments of instruction which are called Directive principles. He cannot ignore them.

According to Prof. M.P.Jain,

The Constitution makers rightly perceived that mere political economy would be meaningless in a country of poor millions without economic justice. The ideals stated in the preamble are reinforced through the directive principles of state policy which spell out in greater detail the goals of economic democracy, the socio-economic content of political freedom and the concept of a welfare State.¹⁴⁷

4.11.1. Welfare of the interstate migrant construction workers

A welfare State has the duty to secure justice and equality among people.

Article 38 imposes a duty on the State to secure social, economic and political justice to people. The State shall abolish the inequalities in income, status, facilities and opportunities among the individuals and the groups.¹⁴⁸

Article 39 of the Constitution declares the Constitutional goals of equal right of men and women to an adequate means of livelihood, distribution of the material resources for the benefit of community, prevention of concentration of wealth and means of production, equal pay for equal work, protection of health and strength of workers and prevention of exploitation of workers, men and women and children.

¹⁴⁷ See *supra* note 4 at 1365.

¹⁴⁸ See art. 38 (1) of the Constitution of India.

The citizens shall not be compelled to do any work unsuitable to their age or health due to their poverty.¹⁴⁹

The directive principles embodies the noble ideas of social, economic and political justice. Even after decades of independence, the State has not been able to secure complete justice to down trodden people like migrant workers.

The migrant construction workers have no protection on livelihood. Their job is precarious in nature. There is no employment security.

There is discrimination between migrant construction workers and the rest of the society. The wealth and resources of the nation are concentrated on certain groups and they are exploiting poor sections like migrant construction workers.

The migrant workers are forced to do hazardous occupations unsuitable to their age and strength due to their starvation. The migrant women and children are not getting the adequate social protection.

¹⁴⁹ Art.39 of the Constitution of India

The State shall, in particular, direct its policy towards securing— (a) that the citizens, men and women equally, have the right to an adequate means of livelihood;

(b) that the ownership and control of the material resources of the community are so distributed as best to sub serve the common good; (c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment; (d) that there is equal pay for equal work for both men and women; (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength; (f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

4.11.2. Social security of interstate migrant construction workers

Social security has great significance in societies having high competition.¹⁵⁰ Social security is a system whereby the State provides financial assistance for those citizens whose income is inadequate or nonexistent owing to disability, unemployment, old age etc.¹⁵¹ Article 41 contains the principle of social security. The State has the duty to secure the right to work, right to education and right to public assistance in cases of contingencies like unemployment, old age, sickness, disablement etc.¹⁵² Article 42 mandates the State to ensure just and human working conditions. There shall be provisions for maternity relief. Just and humane working conditions include fixation of working hours, rest, recreation, leave with pay, sick leave, protection from occupational diseases, medical supervision, reimbursement of medical expenses, maternity leave, right to fair wages, social security and so on. Article 43 promises living wage and decent standard of life.¹⁵³ Article 47

¹⁵⁰ See Werner Sengenberger, *International Labour Standards in the Globalised Economy ; Obstacles and Opportunities for Achieving Progress*, in GLOBALISATION AND THE FUTURE OF LABOUR LAWS 338 (John D.R. Craig & S. Michel Lynk ed., 2006).

¹⁵¹ The Oxford English Dictionary, Vol. XV, 911(1991).

¹⁵² Art.41 of the Constitution of India requires that the “State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.” See also *Consumer Education & Research Centre v. Union of India AIR 1995 SC 922,940(India)*.

¹⁵³ Art.43 of the Constitution of India

State shall endeavor to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life, and full enjoyment of leisure and social and cultural opportunities, and in particular the State shall endeavour to promote cottage industries on individual or co-operative basis in rural areas.

imposes a duty to raise the level of nutrition, standard of living and to improve public health.¹⁵⁴

Though migration of population is a historical phenomenon its speed has increased in the modern economy. New methods of communication and transportation have increased the mobility of the capital as well as the labour.¹⁵⁵ The massive migration of people leads to the disintegration and weakening of joint family system and traditional village which in turn reduced the traditional social protection to the common man.¹⁵⁶ The unorganized workers are devoid of the requisite social protection.¹⁵⁷ The State shall be more vigilant and act as parent patriae to, protect the rights of migrant workers in the present age.¹⁵⁸

The migrant construction worker cannot offer his best if he has no assurance on the income security. There shall be security of employment. If the worker dies, the survivors shall be protected. According to Venkataramiah J., “Security of work is of utmost importance to a worker.”¹⁵⁹

¹⁵⁴ Art 47 of the Constitution of India

State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

¹⁵⁵ See Sucha Singh Gill, *Migration of Labour in India*, 41 IJLE, NO.4, 617, 621 (1998).

¹⁵⁶ See Jeet Singh Mann, *Prospective of the Comprehensive Social Security Scheme for Workers of Organised Sector in India – A Critical Analysis*, 2014–11–LLJ– 26.

¹⁵⁷ See Jeemol Unni & Uma Rani, *Social Protection for Informal Workers*, 44 IJLE, No.4, 559-561. (2001).

¹⁵⁸ In *State of Jharkhand and Another v Harihar Yadav and Others*, (2014) 2 SCC 114, (India) paragraph 15, a writ petition was filed under art. 32 asserting that various Government companies and public undertakings are not paying salaries regularly to their workers. Dipak Misra J., observed that “State shall act as a model employer in protecting the rights of workers. The Constitution casts a responsibility on the State to sustain social and economic security.”

¹⁵⁹ “If a person does not have the feeling that he belongs to an organization engaged in production, he will not put forward his best efforts to produce more.” See *Daily Rated Casual Labour P & T Department v Union of India* AIR 1987 SC 2342, 2347 (India).

If the migrant construction worker loses employment due to sickness, old age or motherhood the State shall help to overcome the crisis.¹⁶⁰ The casual nature of employment and the fear that he can be thrown out of employment at any time makes the unorganized interstate migrant construction workers more susceptible to workplace harassment.

The productivity and efficiency of a worker is closely related to the fair working conditions.¹⁶¹ If a person does not get sufficient rest from his work, he cannot effectively participate in the social life. He cannot maintain sound family relation. Monotonous work will cause fatigue of mind and body and will deteriorate the health and productivity of the worker.¹⁶² The provisions for rest and leisure are essential component of social security.

Social security of migrant women construction worker includes maternal benefit. Maternity care is essential to protect the health of women and the new

¹⁶⁰ *D.S.Nakara v Union of India AIR 1983 SC 130, 138 (India)*. A writ petition was filed challenging classification on Central Civil Service Pension Rules. K.Desai J., explained the social significance of pension in the following words,

Pension is not only compensation for loyal service rendered in the past, but pension also has a broader significance, in that it is a measure of socio economic justice which inheres economic security in the fall of life when physical and mental powers is ebbing corresponding to aging process and therefore one is required to fall back on savings.

¹⁶¹ See Paragraph 3 of the General Comment No. 23 of the Committee on Economic, Social and Cultural rights, on the Right to Just and Favourable Conditions of Work (art.7 of ICESCR), E/C.12/GC 23 dated 27/4/2016.

Discrimination, inequality and a lack of assured rest and leisure conditions plague many of the world's workers. Economic, fiscal and political crises have led to austerity measures that claw back advances. The increasing complexity of work contracts such as short term and zero-hour contracts and non-standard forms of employment as well as an erosion of national and international labour standards, collective bargaining and working conditions have resulted in insufficient protection of just and favourable conditions of work. Even in times of economic growth, many workers do not enjoy such conditions of work.

¹⁶² See S.R.SAMANTH, INDUSTRIAL JURISPRUDENCE, A TREATISE ON THE THEORY AND PRACTICE OF INDUSTRIAL LAW WITH SPECIAL REFERENCE TO INDIA 70-71 (1961).

born baby. If the health of the women is deteriorated, the entire family would suffer.¹⁶³

The legislative, executive and judiciary have a significant role in realizing the constitutional rights. In the words of V.R. Krishna Iyer J.,

The Indian people gaining independence, dreamt that their destiny and destination were composed of fraternity, dignity and liberty which would with deliberate speed be redeemed, but the zigzag of history indeed has provided that all the three constitutional instrumentalities have played truant with dialectics of the constitutional revolution. The radical thrust of the founding deed was not often, immobilised by judicial pronouncements, blunted by executive inaction, obfuscated by legislative hypocrisy and deadened by non implementation of welfare measures.¹⁶⁴

According to Dr. Rajendra Prasad,

“Constitution like a machine is a lifeless thing, it acquires life because of the men who control it and operate it”.¹⁶⁵ In spite of the elaborate provisions of social security in the directive principles of state policy, the conditions of

¹⁶³ In *Municipal Corporation of Delhi v Female Workers (Muster Roll)* AIR 2000 SC 1274, 1281(India). The special leave petition was filed by the casual workers claiming equal maternity benefits with regular workers. Saghir Ahmad J., observed that

A just social order can be achieved only when inequalities are obliterated and everyone is provided what is legally due, when who constitute almost half of the segment of our society have to be honoured and treated with dignity at places where they work to earn their livelihood. To become a mother is the most natural phenomenon in the life of women. Whatever is needed to facilitate the birth of a child to a woman who is in service, the employer has to be considerate and sympathetic towards her and must realize the physical difficulties which a working woman would face in performing her duties at the work place while carrying a baby in the womb or while rearing up the child after birth.

¹⁶⁴ See V.R. KRISHNA IYER J., SOCIAL JUSTICE AND THE UNDONE VAST 27 (1991).

¹⁶⁵ See Constitutional Assembly Debates, Vol. XI, 993. The speech was made on November 26, 1949.

migrant workers are not satisfactory. There is gross negligence on the part of the Constitutional functionaries in realizing the social security rights of migrant workers.

4.12. FUNDAMENTAL DUTIES AND INTERSTATE MIGRANT CONSTRUCTION WORKERS

Every citizen has to observe certain duties towards the society and his fellow beings. The citizen has the duty to abide by the principles of Constitution. The fundamental duties come under part IV A of the Constitution.¹⁶⁶ It was inserted by 42nd amendment, 1976.

As per Article 51A (e), every citizen of India has a duty to promote harmony and the spirit of common brotherhood among all the people of India in spite of all diversities and to renounce practices derogatory to the dignity of woman. According to Dr. Ambedkar, fraternity gives unity and solidarity to social life.¹⁶⁷

Article 51A (j) imposes a duty to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavor and achievement.

In the words of Sri Krishna Chandra Sharma,

“In the modern context, the wealth of a nation consists primarily in the limbs of young men, their character and brain and their working capacity.”¹⁶⁸

¹⁶⁶ Art.51 A of the Constitution of India.

¹⁶⁷ See Constitutional Assembly Debates, Vol. XI, 979. The speech was made on adoption of the Constitution on November 25, 1949.

¹⁶⁸ See Constitutional Assembly Debates, Vol. VII, 230.

The migrant workers face social alienation from the society. The society must accept and enforce the rights of interstate migrants.¹⁶⁹ The fundamental duties cast an obligation to promote harmony and brotherhood among people. It also advocates for the protection of dignity of women. The welfare of migrant workers can be achieved only through their social integration.

4.13. CONCLUSION

Indian Constitution is one of the most beautifully drafted Constitutions of the world. It has incorporated almost all the labour rights that are recognized internationally. The Constitution visualizes the wholesome development of its citizens. The labour migration is the result of lack of livelihood options at home States. Hence social security rights are essential for the development of the interstate migrant worker.

The preamble contains the noble ideas of justice, liberty, equality and fraternity. Social security is based on the ideals of social justice and human dignity.

The fundamental rights especially the rights guaranteed under articles 14, 15, 19, 21, 21A, 23 and 24 are important for the social security of interstate migrant construction workers. The migrants are the victims of direct as well as indirect discrimination which is prohibited under articles 14 and 15 of the Constitution. Article 15 prohibits discrimination based on place of residence. If they are not treated equally with other workers, there will be no growth for the

¹⁶⁹ In *P.Sivaswamy v State of A.P.*, AIR 1988 SC 1863, 1869 (India), while dealing with problem of bonded labour, Ranganath Misra J., observed that “Every citizen must be prepared to accept every other citizen as a person equal to him for enjoying the social benefits and guarantees provided under the Constitution.”

society and the migrant workers. The women migrant construction workers experience gender related discrimination also.

The migrant construction workers do not effectively enjoy the freedom of association guaranteed under article 19(1) (c) of the Constitution due to their migrant status. Their bargaining capacity is very weak. When working conditions are not fair, freedom of occupation promised under article 19(1)(g) of the Constitution is violated. Article 19 of the Constitution guarantees freedom of movement and freedom of residence to its citizen.

Article 21 guarantees decent and meaningful life. The migrant construction workers do not enjoy the right to dignity, right to adequate livelihood, right to health care, right to social protection, right to shelter, right to fresh environment, right to fresh water which form integral part of right to meaningful life guaranteed under article 21 of the Constitution. The migrant children cannot enjoy the basic right to education guaranteed under article 21A of the Constitution due to factors like the migrant status, poverty, language problems, social alienation etc. Child labour is common in construction business which is a negation of articles 21A and 24 of the Constitution.

The interstate migrant construction workers are exploited at workplace. In *Asiad* case, the Supreme Court has observed that if a person is forced to work for less than minimum wages due to his starvation, it will amount to forced labour. The economic compulsion often forces the migrants to work under unfavourable conditions. Bonded labour is a kind of forced labour. Migrants from poor families happens to be the victims of debt bondage.

Migration in abusive condition amounts to forced labour prohibited under article 23 of the Constitution.

The social security rights of the migrant construction workers are expressed in the directive principles of state policy. The directive principles provides for distributive justice. It tries to prevent the concentration of power and resources. There are principles like equal pay for equal work, right to livelihood, just and humane conditions of work, protection of childhood and motherhood, social security benefits, protection of health, right to nutrition, right to living wages and right to leisure which guarantee decent work to migrants. Many principles that are coming under the directives like equal pay for equal work, right to health etc have been elevated to the status of justiciable rights through the creative judicial interpretation.

The fundamental duties under article 51A reinforce the ideals of fraternity, brotherhood, respect towards women, humanism and the strive for excellence. The migrant workers are entitled to the fruits of development. They are not inferior to anyone.

The State has a Constitutional obligation to grant facilities for migration. The power to legislate on social security and other welfare programmes for migrants like unemployment benefits, conditions of work, provident funds, employers liability, workmen's compensation, invalidity and old age pensions and maternity benefits are conferred on both the Centre as well as the States. The State legislature is free to legislate on various aspects of social security of interstate migrant workers. Social protection of informal workers especially the

interstate migrant workers are nonexistent in the period of globalization. The employers prefer informal labour that is very flexible to minimize the cost of production.

Social security is based on social justice and human dignity. It is a directive principle of state policy and a part of article 21 of the Constitution. The informal workers like migrant construction workers do not get adequate social security as envisaged in the Constitution.

CHAPTER V

**SOCIAL SECURITY OF INTERSTATE MIGRANT
CONSTRUCTION WORKERS AND THE INTER STATE
MIGRANT WORKMEN ACT (1979); A CRITICAL ANALYSIS**

Freedom from discrimination and protection against exploitation are the basic rights of migrant workers. These rights are recognized in Part III of the Constitution of India. The Parliament has enacted the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act (1979)¹ to protect the migrant workers from exploitation. It regulate the recruitment and employment of the interstate migrant workers.² The existing legislations like Contract Labour (Regulation and Abolition) Act (1970), Payment of Wages Act(1936), Minimum Wages Act(1948), Employees Compensation Act(1923), Bonded Labour System (Abolition) Act (1976) were found to be inadequate to protect the rights of interstate migrant workmen.

¹ The Act contains 36 sections. The Act was passed by Loksabha on 9-5-1979 and by Rajyasabha on 21-05-1979. It received the assent of the President on 11-6- 1979 and published in the Gazette of India, Extra, Pt .11. S.1, dt.12th June 1979, pp 253-65. All the provisions the Act came in to force with effect from 2-10-1980 vide G. S. R. 513(E) dated 11-8-1980.

² In *Bandhua Mukthi Morcha v Union of India*, (1984) 3 SCC 161, 198 (India). while dealing with the miserable life of the migrant workers employed in the stone quarries of Haryana, Bhagavathy J., observed that

Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act (1979) is a welfare legislation and intended to effectuate the directive principles of state policy and to ensure the decent living and working conditions for workmen when they come from other States and are in a totally strange environment .They would be totally unorganized and helpless and become easy victims of exploitation due to their poverty, ignorance and illiteracy.

A Compact Committee was constituted in February 1977 under the chairmanship of Shri.D.Bandopadhyay. They recommended the enactment of a separate central legislation for interstate migrants.³ The Central Government made Rules in the very next year and the Government of Kerala passed the Rules in the year 1983. This chapter makes a critical analysis of various provisions of the Act and Rules to explore whether the social security of interstate migrant construction workers are given sufficient recognition and protection.

5.1. SCOPE OF THE ACT

The Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act (1979)⁴ applies to every establishment employing five or more interstate migrant workmen on any day of the preceding twelve months. It is immaterial that they are appointed in addition to the local workers.⁵

³ The Committee had taken into account the following facts. 1) The interstate migrant workmen came from low strata of society. 2) They were primarily landless agricultural labourers, mostly unskilled, untrained and illiterate and were unable to understand even the simple arithmetic of wages including advances of middlemen and were therefore easily vulnerable to exploitation. 3) The methods and procedures adopted by the courts in dealing with the provisions of labour laws were totally unintelligible to them and they were unable to get any relief by taking recourse to legal procedures. 4) There was no direct employer-employee relationship between the principal employer and these workmen due to the intervention of a number of intermediaries like contractors, sardars, khatedars, etc. who freely indulged in less payment, untimely payment, unauthorized deductions, arbitrary computation of cash value of food and wrong adjustment with wages. 5) Absence of any organization whatsoever and lack of bargaining power of individual workman to protest against the injustice and oppression which made exploitation a perpetual feature of their day to day life. Quoted in Laxmidar Mishra, *Migration, Factors, Policies and Programmes, in MIGRANT LABOUR AND RELATED ISSUES* 316-317 (Vidyut Joshi ed., 1987).

⁴ Hereinafter referred to as the Act.

⁵ See § 1 (4) of the Act.

Workman is recruited from another State to work in Kerala.⁶ The definition of establishment is wide enough to mean any office or department of the Government or local authority or any place where any industry, trade, business, manufacture or occupation is carried on.⁷ The Act applies to almost every construction site in Kerala as there is hardly any workplace where migrant workmen are not employed. All contractors and principal employers who employ five or more interstate migrant construction worker on any day of the preceding twelve months are covered under this Act. The Government departments are also covered by the Act.

The definition of interstate migrant workmen is very restrictive.⁸ It covers only those persons who are recruited by a contractor. Many of the construction workers are migrating to Kerala through their friends or relatives.

⁶See § 2 (1) (e) of the Act. “An 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.”

§ 2(1)(j) of the Act provides that

Workman means any person employed in or in connection with the work of any establishment to do any skilled, semi skilled or un skilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be expressed or implied but does not include any such person, who is employed mainly in a managerial or administrative capacity; or who being employed in a supervisory capacity, draws wages exceeding five hundred rupees per mensem, or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

⁷ § 2 (1) (d) of the Act.

⁸ See S.N.TRIPATHY & C.R.DASH, MIGRANT LABOUR IN INDIA 35(1997). A study was made on the problems faced by migrant workers in State of Orissa and it was found that they were facing harassment like denial of minimum wages, non-payment of wages, delayed payment of wages, arbitrary computation of wages, unauthorized deductions from wages as Jamadari Commission, denial of journey allowance and displacement allowance, denial of adequate residential accommodation, denial of protective clothing, denial of adequate first aid and hospital facilities, denial of compensation under the Workmen’s Compensation Act, (1923), denial of benefits flowing from ISMW Act (1979) etc. The benefits were denied by taking the plea that they were not migrant workers as per the provisions of the Act as they had come on their own to work in other State.

In *Salal Hydro Project v State of Jammu & Kashmir*⁹ one of the contentions raised by the Union of India for the non implementation of the Act was that most of the migrant workers did not come under the strict definition of the migrant worker as they are not recruited by a contractor. They had gone to work for their own. The Court negated this contention and referred to the objectives of the Act. Bhagavathi J., observed that

“Interstate migrant workers are generally illiterate and unorganized and are by reason of their extreme poverty, become easy victims of the abuses and malpractices of contractors, it was necessary to have a comprehensive legislation with a view to securing effective protection of interstate migrant workers”.¹⁰

All migrant workmen, whether they come on their own, or change contractors after entering the recipient State require the protection of the Act.¹¹

5.2. REGISTRATION OF THE ESTABLISHMENTS

One of the important safeguards provided in the Act to prevent the exploitation of migrant workers is the requirement of registration. Every principal employer,¹² employing migrant workers is required to register the establishment under the Act within a period of thirty days. As per section 6 of

⁹ *AIR 1984 SC 177 (India)*. A letter addressed to the Supreme Court with a news item describing the pathetic conditions of interstate migrant and other workers in the construction site of Salal Hydro Electric Project was treated as a writ petition. The main issues involved in the writ petition were the non enforcement of welfare laws with regard to the health and safety of the workers such as ISMW Act (1979), Contract Labour (Regulation and Abolition) Act (1970), The Minimum Wages Act (1948) etc. Court observed that the Act was enacted to protect the workers from abuses by the contractors, sardars and khatedars recruiting them. The employment of interstate migrant workmen known as dadan labour in Orissa is an exploitative system. Once the worker comes under the control of the contractor, he takes him to another State on payment of railway fare only. Working hours are not fixed and they have to work on all days in a week under extremely bad working conditions without the wages promised.

¹⁰ *AIR 1984 SC 177, 180 (India)*.

¹¹ *See* The Report of National Commission on Rural Labour 310-311 (1991).

¹² *See* § 2 (1)(g) of the Act .

the Act, only registered establishment can appoint interstate migrant worker.¹³ In Kerala, District Labour Officer is the registering authority. The employer has to remit the registration fees on the basis of number of workers he proposes to appoint.¹⁴ The authority has the duty to conduct an enquiry to satisfy on the genuineness of the application.¹⁵ The employer has to keep the certificate up to date.¹⁶ The registration is subject to cancellation or suspension if it is found that it is obtained on misrepresentation or suppression of any material fact.¹⁷

The majority of the establishments in Kerala are not registered under the Act. If they are registered they will be subject to periodic scrutiny by the department. Government shall conduct an intensive drive to identify the establishments that are not registered under the Act. It is really unsatisfactory that only a minor punishment is provided for violating the provisions with regard to registration.¹⁸

¹³ Rule 3 (Central) (1980) provides for registration of an establishment.

¹⁴ Rule 12 (Central and Kerala) provides for the registration fees.

¹⁵ Rule 5 (Kerala and Central) states that if the principal employer fails to carry out the amendments suggested by the authority or if the authority has reason to believe that the application is not bonafide it can be rejected.

¹⁶ § 4(2) of the Act read with Rule 4 (Central) states that the registering authority shall issue to the principal employer a certificate of registration in Form II. Rule 4(3) says that any subsequent changes shall be intimated to the registering authority within 30 days.

¹⁷ § 5 of the Act lays down the procedure. The employer shall be heard before taking the decision.

¹⁸ As per § 25, violation of provisions regarding employment shall be punishable with imprisonment for a term up to one year or with fine which may extend up to one thousand rupees or both. An additional fine which may extend up to one hundred rupees is provided for continuing offences.

5.3. LICENCING OF CONTRACTORS

Section 2(1) (b) defines a contractor.¹⁹ Contractor require licence for recruiting interstate migrant worker.²⁰ As per section 9 of the Act, the application for the grant of license should contain the particulars regarding the location of establishment, nature of process or work for which the workers are to employ and so on.²¹ He shall submit application to the officer having jurisdiction in the area where recruitment is made .The licencing officer has to make an enquiry before granting licence .²² The licence is not transferable. It should contain the terms and conditions of recruitment, the number of workers employed, the wages payable, hours of work, and other essential amenities in respect of the interstate migrant work men.²³

¹⁹ “Contractor”, in relation to an establishment, means

A person who undertakes (whether as an independent contractor, agent, employee or otherwise) to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, by the employment of workmen or to supply workmen to the establishment, and includes a sub-contractor, khatadar, sardar, agent or any other person, by whatever name called, who recruits or employs workmen.

²⁰ See § 8 of the Act.

²¹ As per Rule 7(3) (Central) every application for the grant of a license shall be accompanied by a certificate of the principal employer to the effect that he undertakes to be bound by all the provisions of the Act and the Rules made there under. Rule 48 requires that every principal employer shall maintain in respect of each registered establishment a Register of Contractors in Form XII.

²² As per Rule 8 (Central and Kerala), the Licensing Officer shall consider certain factors in granting or refusing to grant a license like, whether the applicant is a minor, or is of unsound mind or is an un discharged insolvent or has been convicted of an offence which, in the opinion of the Central Government involves moral turpitude at any time during the period of five years immediately preceding the date of application, whether the fees for the application and the security has been deposited by the applicant etc. Rule 11(Kerala and Central) provides for the form, terms and conditions of license.

²³ Licence shall be issued in Form VIII. The rates of wages fixed shall not be less than the rates specified under the Minimum Wages Act (1948). The workers employed by the contractor and those directly employed by the employers to do similar work shall enjoy same conditions of service. The copy of the licence granted and the period of its validity shall be displayed in the premises where the migrant workers are employed.

The licensing officer can require the contractor to furnish any reasonable security for the due performance of the conditions of the licence.²⁴ The Act insists that the contractor shall be given an opportunity and the licencing authority shall record reasons for demanding security. Section 10 empowers licensing officer to revoke or suspend the licence or forfeit the security ,if it is found that the licence is obtained on misrepresentation or suppression of any material fact or there is a contravention of the terms of licence, Act or Rules.²⁵

The contractor recruits construction workers from a State after fixing the terms and conditions and employs them in Kerala or the construction workers come to Kerala with their relatives or friends in search of work and then come in to contact with a contractor. In all these cases the person who is having bargaining capacity is the contractor. It is through the contractor that the terms and conditions of work are fixed. The principal employer may have contact only with the contractor. Licencing of contractors is an important tool to prevent the exploitation of migrant workers. If the contractor fails to comply with the conditions of licence, it can be cancelled. The licencing authority can personally visit the work place to ensure that particulars given by the contractor are correct. If the provisions regarding licencing are strictly complied with, the

²⁴ § 8 of the Act. Rule 10 (Central) says that the Licensing Authority shall prepare an estimate of all the amounts needed to provide for recruitment or employment of migrant workmen on the basis of the factors like wages, provision of medical facilities, protective clothing, drinking water, latrines, urinals, washing facilities, rest rooms, canteens, creche, residential accommodation, journey allowance, number of migrant workmen employed or recruited and duration of work. The licensing officer shall determine the amount of the security after considering the solvency of the applicant not exceeding 40 percent of the amount estimated by him. Rule 17 (Central and Kerala) provides for the refund of security.

²⁵The contractor is also liable to penalty under § 25 of the Act. As per § 10 read with Rule 19 (Kerala) the aggrieved party can file appeals. Rule 14 (Central and Kerala) provides for the renewal of licence. Rule 15 says that the licence is valid for twelve months.

conditions of the migrant construction workers will be improved. If the contractors have the fear that their licence is liable to be cancelled, suspended or that the security they remitted will be forfeited they will not dare to violate the provisions of the Act or the conditions of their licence.

5.4. DUTIES OF CONTRACTORS

The migrant construction workers are ill treated in respect of working conditions and amenities.²⁶ The amenities include accommodation, various allowances, medical facilities, holidays, leisure, safety mechanisms and the like. Chapter IV of the Act describes the duties of the contractor. Chapter V explains the welfare measures for the workers. Section 16 of the Act prescribes the facilities that are to be provided by the contractor to the migrant workers.²⁷

5.4.1. Duty to furnish information

Every contractor has the duty to furnish the details of migrant workers employed by him to the State of origin and employment within fifteen days from the date of recruitment.²⁸ The contractor has to furnish a return showing the details of wages and allowances paid by him to the worker on completion

²⁶ See Inderjit Singh, *Legislative and Administrative Measures with Special Reference to Interstate Migrant Workmen Act (1979)*, in *MIGRANT LABOUR AND RELATED ISSUES* 230-231 (Vidyut Joshi ed., 1987). The contractors used to get thumb impression of migrant workers on blank paper. These blank papers were used subsequently to deprive the workers of their legal claims under various labour laws including the ISMW Act. In Punjab, the employers compels the migrant workers to register themselves with Local Employment Exchanges on their arrival in that State. If they subsequently get any employment through Employment Exchanges they will not get any protections from the Act.

²⁷ According to § 16, the contractor has to ensure regular payment of wages, equal pay for equal work irrespective of sex, suitable conditions of work, suitable residential accommodation and medical facilities to the interstate migrant workers .

²⁸ § 12 of the Act. Rule 21 (Central and Kerala) states that every contractor shall furnish the particulars regarding recruitment and employment of migrant worker in Form X.

of work.²⁹ The contractor and the principal employer has to maintain certain registers and records about the particulars of the migrant workers employed by them and the nature of the work performed by them. They shall exhibit notices within the premises of the establishment about the conditions of work.³⁰

Section 16 of the Act and Rule 23 (Central and Kerala) casts a duty on the contractor to send telegrams to the authorities if the worker suffers from a fatal accident or serious bodily injury or death. He should inform the relatives the date of accident, place and nature of accident or death. He has to send report within 24 hours on the action taken by him or by the principal employer.

The migrants have a tendency to move continuously. It is very difficult to collect proper statistics of migrant workers.³¹ One of the challenges faced by the labour authorities while planning welfare activities is the absence of proper data of the migrant workers.³² The Government need proper data of migration to frame sound policy of migration.³³ The migrant construction workers in Kerala are not documented completely. The employers will always try to keep the number of registered workers below the statutory minimum to escape from

²⁹ See Rule 24 (Kerala).

³⁰ § 23 and the Rules 48 to 55 (Central) provides for the registers and the notices that are to be maintained by the contractor and employer.

³¹ See J.R. Rele, *Trends and Significance of Internal Migration in India*, 31 THE INDIAN JOURNAL OF STATISTICS, SERIES B (1960-2002), No.3/4, 506 (Dec. 1969). Female migration is more stable because it is the result of marriage. Return migration is more common among male migrant workers.

³² See *Supra* note 3 at 319. The identification of the areas which are prone to migration and collection of data about the demographic characteristics of migrant population is very important. It will help the Government to formulate employment guarantee schemes to secure livelihood to people and to minimize migration.

³³ Policy should be based on the up to date information about the trends in labour market, profile of migrant workers including their age, sex composition, education and skills, qualification, labour force participation, sectors of work, treatment and conditions of work and extent of integration. See ILO, INTERNATIONAL LABOUR MIGRATION, RIGHTS BASED APPROACH 152 (2010).

the provisions of labour laws. The registers and records are not kept in the prescribed manner. It creates many problems including law and order issues. Under the guise of migrant workers many criminals are indulging in many antisocial activities. If the duty to give information is complied with, the system will be made transparent.

5.4.2. Duty to issue pass book

As per clause (4) of section 12 (1), every interstate migrant workman shall be given a passbook .The particulars in the passbook shall be entered in Hindi, English and in the language of the workman. The passbook shall contain his photograph, the name and place of the establishment, the period of employment, the rates and modes of payment of wages, the allowances payable and the deductions made.³⁴

The pass book has two functions. It serves as the identity document of migrant construction worker³⁵ and act as the proof of their entitlements.³⁶ The passbook is actually an assurance on his conditions of services. It makes the principal employer accountable to pay wages and allowances as entered in the

³⁴ See § 12 (b) of the Act. Rule 23 (Central) provides that the pass book shall contain additional details like the date of recruitment, the date of employment, name and address of the near relatives of the worker and the total unit of work done. Rule 23 (Kerala) provides that the pass book shall include wage period, total attendance, unit of work done, total wages earned, deductions, net amount paid, signature of the contractor or his authorized signatories with date.

³⁵ Due to their peculiar appearances and manners, the migrant workers catch the attention of police and other authorities at public places very easily. Police as well as the public suspect them as criminals. Pass book can prove their identity as a worker. See Priya Deshingkar & John Farrington, *Circular Migration and Multilocational Livelihood Strategies*, in SOCIAL PROTECTION AND MIGRANT SUPPORT 306 (Priya Deshingkar & John Farrington ed., 2009).

³⁶ In the absence of identity cards, their lives and livelihoods will be controlled by unscrupulous contractors. The public will never trust them. The documents are also necessary to enforce their claims through the courts. See Anibel Ferus Comelo, *Migration and Precariousness, Two Sides of the Contract Labour Coin*, XLIX EPW, No.36, 39, 42. (Sept. 6, 2014). A study of migrant security workers in Goa is reported.

passbook. If the passbook is recorded in the language that is known to the worker, it helps him to know and assert his rights. In practice only a small percentage of the workers have the identity card. Worker has a corresponding duty to keep his identity card wherever he goes. The pass book will help the migrant construction worker to enforce his claim under the Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act (1996) because it is the evidence of his qualifying days of work.

5.4.3. Duty to provide Allowances

The contractor has the duty to provide displacement allowances, journey allowance and return fare. As per section 14 of the Act, the contractor is required to pay displacement allowance equal to fifty percent of the monthly wages payable to the worker or seventy-five rupees, whichever is higher. The amount paid to a workman as displacement allowance shall be in addition to the wages or other amounts.

As per section 15 of the Act, the worker is entitled to a journey allowance. The worker is entitled to wages for the days of journeys as if he were on duty.³⁷

The migrant construction workers in Kerala have to spend a considerable portion of his wages for travel expenses. The public as well as private transporting system is very costly for a worker. The provisions for

³⁷ As per Rule 22 (Central), the contractor shall pay to the migrant workman the return fare on the expiry of the period of employment and also on his termination of service before the expiry of the period of employment. If it is certified that he is incapacitated for further employment due to injury or continued ill-health he will be given the return fare. If he resigns from service for the violation of the terms and conditions of his employment by the contractor he is eligible to the return fare. Kerala Rules 22 states that the contractor has to pay return fare on loss of work which is not due to the fault of the migrant worker.

journey allowances will help to reduce the cost of migration. The provision for payment of return fare is commendable because law takes care of the migrant worker till he reaches his home State. These benefits are available only when the migrant construction worker is recruited by the contractor.

5.4.4. Wages and Working Conditions

Section 13 requires that the wage rates, holiday, hours of work and other conditions of service of an interstate migrant workman shall be similar to other workers. The wages shall not be less than the minimum wage and it shall be paid in cash.³⁸ The wage period shall not exceed one month. The employer or contractor shall not deduct the commission of contractors from the wages payable to the migrants.³⁹ The contractor has the duty to ensure regular payment of wages and equal payment for equal work irrespective of sex. Section 17 further casts a responsibility on the contractor that he should disburse the wages in presence of the authorized representative of the principal employer.⁴⁰

³⁸ As per Rule 36 (Central) , holidays, hours of work , overtime wages and other conditions of service of migrant workman shall not be less favourable than those obtaining in that establishment or in similar employment in the area. The disputes with regard to conditions of work shall be determined by the Deputy Chief Labour Commissioner (Central).

³⁹ *Salal Hydroelectric Project v State of Jammu & Kashmir (1983)2SCC 181, (India)* Court found that the contractors employed under the project (Central Government project) were not following the provisions of the Contract Labour (Regulation and Abolition) Act and ISMW Act (1979). The amenities provided under § 13 and § 16 of the ISMW Act were blatantly violated. Court directed that payment of overtime and normal wages shall be made directly to the workmen without any deductions and shall be made in presence of representatives of Corporation or Central Government.

⁴⁰ Chapter IV of the Kerala Rules provides for the payment of wages, rate of wages, wage period, time of payment of wages, payment of wages on termination of work, mode of payment and so on. Kerala Rules 25 to 34 and Central Rules 25 to 35 deal with the duty to pay wages. As per Rule 32 (Central) and Rule 31 (Kerala), all wages shall be paid in current coin or in currency or in both. No unauthorized deduction can be made from the wages.

Due to poverty and unemployment they are ready to work under bad conditions.⁴¹ Their willingness to work for low wages badly affects the working conditions of the local workers also.⁴² Regular payment of wages is as important as payment of wage. Wage cutting and wage withholding are common among interstate migrant workers.⁴³ The migrant construction workers in Kerala are discriminated in wage rates, holidays, working hours and other conditions of work.

⁴¹ See PUDR Team, *Violation of Workers' Right at Common Wealth Games Construction Site* 44, EPW, No.24, 10-12 (Jun.13-19, 2009).

Unskilled workers were paid Rs.85 to Rs.100 per day as against the stipulated minimum wage of Rs.142 till February 2009 for eight hours of work. They were paid Rs 134 – Rs.150 for twelve hours of work for which they should get Rs.284 as per law. Skilled workers were paid Rs.120-130 for eight hours of work while the wage due was Rs.158 per day. They were made to work for seven days in the week without any leave .If they were working on holiday, they were entitled to double wages, it was not given. They were not issued ID card, wage slip, passbook etc. Wages were deposited with contractors and that was payable to the workers only on completion of work. The first payment was made only after 45 days of work that too only for 15 days of work. The workers had no proof to claim back the balance amount from the contractor. The principal employer or the representative was not present at the time of disbursement of wages. No safety equipment like helmet, shoes, mask were given by the contractor. If this had been done, its cost would have been deducted from the wages. Women were paid less wages. The workers lived in camps made of asbestos sheets without electricity, ventilation, separate kitchen and toilets. The Press, NGOs or any outsiders were not allowed to enter the worksite.

⁴² See also A.K. Gupta, Arora & B.K. Aggarwal, *Sociological Analysis of Migration of Agricultural Labours from Eastern to North Western Region of India*, 123 IJIR, No.4, 436, 438 (Apr.1988). Majority of the employers prefer migrant labour because they are cheaper, hard working and more obedient than local workers. It reduces the employment opportunities for locals. The locals could not demand higher wages because migrants are ready to work for less wages. It creates tension between locals and workers.

⁴³ See Ben Rogaly, *Workers on the Move : Seasonal Migration and Changing Social Relations in Rural India*, 6 GENDER AND DEVELOPMENT, No.1, (MIGRATION AND MOBILITY) 21, 26 (Mar. 1998). The hardships faced by migrant workers in West Bengal by the withholding of wages was discussed. Even when the work was interrupted by reasons other than that of the workers, the employer withheld arrears to prevent the worker leaving the place. The migrant workers had no choice other than to stay the place or to leave the place without wages. The work in cold and wet condition and poor accommodation made some workers sick, but no medical benefit was given and the sick became more indebted to employer for their stay. See also BENOY PETER, VISHNU NARENDRA, *GOD'S OWN WORKFORCE UNRAVELING LABOUR MIGRATION TO KERALA* 83 (2017). The workers are suffering from nonpayment or post payment of wages, forcible detention and physical assaults by the contractors or employers.

5.4.5. Medical facilities

Section 16 of the Act imposes a duty on the contractor to provide free medical facilities during the period of employment. Every contractor shall provide and maintain first aid boxes for his workers.⁴⁴ The workers shall be given sufficient instructions on the occupational hazards and safety measures.⁴⁵ The contractor shall provide protective clothing to the migrant worker.⁴⁶

These provisions take care of the health and life of the migrant construction workers. The medical facilities are not limited to the workers. The family members are also entitled to the benefits. Medical aid is available for any ailment; it is not limited to occupational diseases. The migrant construction workers in Kerala do not get free medical care as envisaged under the Rules. Due to unhygienic work place and accommodation they are always susceptible to epidemics. Many diseases which are not common today are rampant in migrant labour camps. They have to meet the expenses themselves and they do not get after health care also. They do not get the insurance facilities for the lack of registration. In case of sickness, they are forced to return home without any savings.

⁴⁴ Rule 37 (Central) and Rule 36 (Kerala) states that the contractor shall arrange the medical check-up and meet the expenses for treatment of worker and his family for any diseases including hospitalisation. If the worker himself consult the medical practitioner, the consultation fees and price for medicine shall be reimbursed by the contractor. Adequate arrangements shall be made for the rehabilitation of the sick workers. Rule 37 (4) contain details of first aid boxes depending upon the number of workers. If the number of the workers exceeds one hundred and fifty, a person who is trained in first aid treatment shall be appointed.

⁴⁵ The instructions must be given in a language that migrant workers can understand. *See supra* note 33 at 106.

⁴⁶ Rule 38 (Central) provides that where the temperature falls below twenty degree centigrade, the contractor shall provide one woolen coat and one woolen trousers once in two years. Where the temperature falls below five degree centigrade the contractor shall provide a woolen overcoat once in three years. Rule 37 (Kerala) provide for protective clothing.

5.4.6. Accommodation

The accommodation of migrant construction workers is far from satisfactory.⁴⁷ As per section 16 of the Act the contractor has a duty to provide and maintain suitable accommodation for the workers. Rule 45 (Central) and Rule 44 (Kerala) provide for residential accommodation for the workers and family. The place should be spacious enough and it should contain separate space for kitchen, bathroom and toilets. It should have sufficient ventilation, protection against heat, wind, rain and shall have smooth, hard and impervious floor surface. The accommodation shall be provided at a convenient distance and the place shall always be kept clean and hygienic.⁴⁸

⁴⁷ The workers colonies are places of dehumanization and otherisation. See Tanweer Fazal, *Migrant, Home and Politics : Bihari Laboureres in the Metroplolis*, 46 INDIAN ANTHROPOLOGIST, SPECIAL ISSUE ON EVERYDAY STATE AND POLITICS 106, 93-110 (Jul.–Dec. 2016).

⁴⁸ Rule 45 (Central). Residential accommodation

(1) The contractor shall provide to every migrant workman- (i) in case he is accompanied by any other member of his family a suitable barrack so as to accommodate one room having at least a floor area of 10 square meters, a verandah and adequate additional covered space for cooking food as well as one common sanitary latrine, one common bathroom for every three such quarters; and

(ii) in case he is unaccompanied by any other member of his family a suitable barrack so as to accommodate not more than ten such migrant workmen, having at least a floor area of not less than 6.5 square meters for each such migrant workman making use of the barrack, a verandah and adequate additional covered space for cooking food as well as one common sanitary latrine and one common bathroom for every ten such migrant workmen;

within fifteen days of coming into force of the rules in the case of the existing establishments and within fifteen days of the commencement of the employment of migrant workmen in new establishment.

(2) Every quarter and the barrack shall be so constructed as to afford adequate ventilation, protection against heat, wind, rain and shall have smooth, hard and impervious floor surface.

(3) The quarters or the barracks, as the case may be, shall be at a convenient distance from the establishment and shall have adequate supply of wholesome drinking water.

(4) The area in which the quarters and/or barracks are located as well as the latrines and bathrooms provided therein shall be kept in a clean and sanitary condition at all times.

Rule 40 (Central) and Rule 39 (Kerala) provides for rest rooms. If the nature of work requires halt at night and the period of the work is likely to exceed three months or more, rest rooms or other suitable accommodation shall be provided at a convenient distance from the work place. Separate rooms are to be provided for female workers. The rest room or other suitable alternative accommodation shall be so constructed as to afford adequate protection against heat, wind and rain and shall have smooth, hard and impervious floor surface.

The interstate migrant workers are disadvantaged with respect to their housing and basic facilities.⁴⁹ In *Jose. M. A. v Vadavukodu Puthencruz Grama Panchayath and others*⁵⁰ the Kerala High Court considered the inhuman living condition of migrant labourers. They were living in building that was taken on lease by the contractor who employed them.⁵¹ The Court directed the District Collector to depute a senior officer to conduct an inspection of the premises , close down the unhygienic labour camp and to provide alternate facilities for

⁴⁹ See Ministry of Housing and Urban Poverty Alleviation, Paragraph 131 of Report of the Working Group on Migration 44 (2017).

Migrants face difficulties in accessing housing and other basic amenities such as water and sanitation. In many cases, work is usually in sectors like construction, where work availability is intermittent and workers remain under-employed. As such, workers tend to live in miserable conditions and are exposed to harassment. They, especially shorter term migrants, are often forced to live in urban slums, facing constant threats of displacement and eviction. Many live in footpaths and city parks without provision of basic services and subject to harassment, especially for women.

⁵⁰ *2016 (3) KHC 498 (India)*. The writ petitioners were the owners of neighbouring property where the labour camp was situated. They were aggrieved with abysmal living conditions of workers which led to contamination of ground water in the locality. The life of petitioner became miserable by the waste and waste water ejected to his building and the constant stench from the labour camp. The labour camp was over crowded. The Commission appointed by the Court informed that about 200 workers were residing in that building.

⁵¹ The toilet and the bathrooms were found to be leaking with waste water dribbling down the walls and found to be stagnated in the premises. The labour camp was carried on in a manner injurious to public health with the building and its immediate premises stagnated with foul and filthy solid and liquid waste which could even result in outbreak of contagious and infection diseases. Paragraph 11, *2016 (3) KHC 498,503 (India)*.

accommodation to the workers. Court also directed the Panchayat to take necessary steps to seal the building.⁵²

The employer and the contractor have equal obligation to provide suitable accommodation to the workers and their family. The area of accommodation depends on the number of workers. However these provisions remain as dead letters and never followed in its spirit. In *People's Union for Democratic Rights and Others v. Union of India & Others*⁵³ the honorable Supreme Court observed that stringent punishments shall be provided for violation of labour laws. Otherwise the labour laws would become nullity.

The migrant construction workers live crowded in a single room or a make shift shack. In the study conducted by Gulati Institute of Finance and Taxation in the year 2013 about the migrant domestic labour in Kerala, it was reported that the nature of housing of the migrant labourers is largely determined by the sector of employment and level of wages and skill.⁵⁴The workers have to pay unreasonable rent to land owner. The single room is often used for cooking and sleeping.

⁵² The owners of the property were held liable to the expenditure incurred by the State and Panchayat for closing down the labour camp and for rehabilitating the migrant workers. Paragraph 14, 2016 (3) KHC 498,504 (India).

⁵³ WP(C) 524/2012. The Court observed that

The Magistrates seem to view the violations of labour laws with great indifference and unconcern as if they are trifling offences undeserving of judicial severity. They seem to over-look the fact labour laws are enacted for improving the conditions of workers and the employers cannot be allowed to buy off immunity against violations of labour laws by paying a paltry fine which they would not mind paying, because by violations of the labour laws they would be making profit which would far exceed the amount of the fine.

⁵⁴ “Some live at the work site itself, in temporary shacks or sheds in common lands, in single room flats, one-room tenements or one bed room houses and many of them live in open spaces or common lands in huts made of plastics and sheets”. See M.P. JOSEPH, D. NARAYANA & C.S. VENKATESWARAN, DOMESTIC MIGRANT LABOUR IN KERALA 18-21 (2013).

5.4.7. Facilities at work place

Section 16 of the Act says that working conditions shall be made suitable for migrant workers. The Rules provide for supply of freshwater, canteens, latrines, urinals, crèches, washing facilities and so on.⁵⁵

Rule 41 (Central) requires that, canteens shall be maintained by the contractor or the principal employer where the number of the migrant workers exceed one hundred and the employment is likely to continue for a period of six months or more. There shall be proper system for waste disposal, sufficient fresh water supply, sufficient clothes, sufficient air, sufficient furniture, clean utensils, washing facility and separate place for cooking and storage. Women migrant workers should get privacy in dining hall, washing area and service counter. The food stuffs and other items to be served in the canteen shall be in conformity with the normal habits of the migrant workmen. The charges for meals, other foodstuffs, beverages and other items served in the canteen shall be based on no-profit, no-loss basis and shall be conspicuously displayed in the canteen.⁵⁶

Rule 42 (Central) and Rule 41(Kerala) provides for latrines and urinals at workplace. The sanitary facilities are to be provided based on the number of workers. The latrines and urinals should have proper door and fastenings,

⁵⁵ Rule 43 (Central) requires that there shall be adequate and hygienic washing facilities .Separate facilities shall be provided for females. Rule 42 (Kerala) provide for washing facilities.

⁵⁶ See Rule 41 (Central) and Rule 40 (Kerala). Rule 41 (15) states that the prices of foodstuffs and other articles served in the canteen shall not consider expenditure like the rent for the land and buildings, depreciation and maintenance charges for the building and equipment provided for in the canteen, cost of purchase, repairs and replacement of equipments including furniture, crockery, cutlery and utensils, water charges and other charges incurred for lighting and ventilation, interest on the amounts spent on the provision and maintenance of furniture and equipment provided for in the canteen etc.

sufficient water supply, sufficient light and cleanliness. The latrines and urinals shall be conveniently situated and accessible to workers at all times at the establishment.

Rule 44 (Central) and Rules 43 (Kerala) provides for crèches where 20 or more women migrant workers are employed and their employment is likely to exceed for a period of three months or more. One of such rooms shall be used as playroom for the children and the other as bedroom for the children. The children shall be provided with toys and games in the play room and cots and beddings in the bed room.⁵⁷

In *Rajan Kudumbathil v Union of India*⁵⁸, the High Court of Kerala observed that it is the responsibility of welfare State to ensure that no citizen of

⁵⁷ Rule 44 (Central) requires that the creche shall afford sufficient protection against heat, damp, wind, rain and shall have smooth, hard and impervious floor surface. It shall be situated at a convenient place from the workplace. There shall be sufficient ventilation and lighting. If the contractor fails to provide the crèche within time, it is the duty of the principal employer to provide the crèche within fifteen days of the expiry of the time allowed to contractor.

⁵⁸ *WP (C) 15393/2009*, The judgement was delivered by Mr.Bannurmath CJ., and A.K.Basheer J., A writ petition was filed under art. 226 before the Kerala High Court by a practicing lawyer highlighting the problems faced by migrant workers with the following prayers

- a) Issue a writ of mandamus to take an assessment of migrant laborers in various parts of the State and to prepare a comprehensive scheme for rehabilitation and welfare of such workers and their family members in accordance with ISMW Act and Rules.
- b) Issue a writ of mandamus to implement the provisions of ISMW Act and Rules.
- c) Issue a writ of mandamus to ensure that the slum dwellers and migrant workers are not attacked or tortured by local population and to ensure that sufficient protective measures are taken to protect their lives.
- d) Issue a writ of mandamus to ensure that offences of illegal traffic, sexual exploitation and other types of assaults are not committed on the women and children among pavement vendors, slum dwellers and migrant workers.
- e) Issue a writ of mandamus to ensure that slum dwellers and migrant workers at Manappatti Paramna ground in Kochi are properly rehabilitated and they are given basic facilities including shelter and water. The High Court ordered that the respondents shall ensure that a proper study or assessment is made with regard to the migrant workers who are eking out their livelihood in various parts of State of Kerala. These workers shall be get registered at Panchayat/Corporation/ District level with provisions to issue photo identity cards. It shall be made mandatory for the employers to report the employment of migrant workers to the competent authority.

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.

The migrant workers are often forced to urinate and defecate in open place.⁵⁹ The amenities guaranteed under the Act are not available to them.⁶⁰ In fact majority of the interstate migrant workers are leading sub humane life in unhygienic conditions. The welfare provisions of the Act is not properly implemented.⁶¹ In *Dr.Damodar Panda v State of Orissa*⁶², Court made a direction that every recipient State and Union Territory shall permit officers of home States to conduct appropriate inquiries within their territorial limits to ensure the proper implementation of the Act.⁶³

⁵⁹ See *supra* note 54 at 22.

⁶⁰ See M.P.Subrhmmanian & M.R.Hegde, *Migrant Workers in Uduppi Taluk*, 32 EPW, No.31, 1953-1954 (Aug. 2-8, 1997). The living conditions of interstate migrant workers in Uduppi is described in the following words.

About 71 % of migrant workers in Uduppi lived in thatched sheds which were put up by them in clusters. These sheds were no more than four mud walls, surrounding 60 to 80 square feet area, over which had a sort of roof with whatever material (gunny bags, tin sheets, plywood wastes, palm leaves, polythene sheets) was available on hand. The sources of water for all purposes like drinking, cooking, washing, etc were public taps and wells. The kitchen for majority of migrant workers was three stones placed in irregular order.

⁶¹ In *Salal Hydro Project v State of Jammu & Kashmir*, AIR 1984 SC 177,181(India) while dealing with the conditions of interstate migrant workers employed in Salal Hydro Project, Supreme Court vehemently criticized the Central Government for the non implementation of § § 12,13,14,15 and 16 of the ISMW Act and the Rules made there under.The Court directed the Central Government to take immediate steps for the enforcement of the Act in respect of the migrant workers employed in the project. The Government has to identify them and to take necessary steps to ensure them the benefits. Court observed that it may not be possible for the unorganized construction workers to bring the nonobservance of laws before the court, the Government had to tighten up its inspection machinery and to ensure that detailed inspections are carried at regular intervals.

⁶² AIR 1990 SC 1901, 1902 (India) paragraph 2. Judgement was delivered by Ranganath Misra J., and Kuldip Singh J.,

⁶³ See § 20 of the Act.

Because of the poor bargaining position the migrants cannot insist on facilities at workplace.⁶⁴ The migrant construction workers do not get sufficient fresh water for drinking and washing. The food habits of the migrant workers are very different. If they get food according to their custom and habits, their health and efficiency will be improved. Moreover they have to pay exorbitant amounts outside for their homely food. Sufficient sanitation facilities are one of the basic necessities of a migrant construction worker. The facilities are not adequate with regard to the number of workers. It causes serious health problems and environmental problems. If there is facility of creches, the security of migrant children is warranted to some extent.

5.5. LIABILITIES OF THE PRINCIPAL EMPLOYER

The responsibility to provide welfare measures for interstate migrant construction workers are primarily entrusted with the contractor. According to section 18 of Act, if the contractor fails to provide any facilities to the worker it becomes the duty of the employer to provide the same.⁶⁵ Section 17 requires that the employer shall deploy his agent to check the disbursement of wages by the contractor. In *Jose.M.A v Vadavukodu Puthencruz Grama Panchayath and*

⁶⁴ See Tristan Brusle, *Choosing a Destination and Work : Migration Strategies of Nepalese Workers in Uttarakhand, Northern India*, 28 MOUNTAIN RESEARCH AND DEVELOPMENT, No.3/4, 240, 244 (Aug.-Nov. 2008). The studies revealed the bad working conditions of Nepalese migrants in Uttarakhand. The native workers leave some jobs as degrading. Those jobs were occupied by migrant workers and they are employed only in low paid jobs instead of their honesty and hard work.

⁶⁵ Apart from the general punishment provided for violation of provisions of the Act, no other punishments are provided for the employer for the breach of his duties. § 25 and § 26 of the Act provides for general punishment.

Others,⁶⁶ Kerala High Court held that even when the works are carried out through the contractors, principal employer has a duty to ensure the welfare of workmen so employed. It is immaterial that there is no direct employer-employee relationship or the workers are not entered in the regular rolls.

If the migrant workers have borrowed any amount from employer or contractor, the debt shall be deemed to have been extinguished on completion of the work .As per section 19 of the Act,

“It shall be the duty of every contractor and every principal employer to ensure that any loan given by such contractor or principal employer to any interstate migrant workman does not remain outstanding after the completion of the period of employment of such workman .”

This provision helps to prevent migration as a result of debt bondage. The responsibility of the employer to provide welfare of migrant workers is coextensive with that of the contractor. The contracting and sub contracting of the work reduces the responsibilities of the employer. In effect the migrant construction workers do not get justice from both the employer and contractor.

5.6. SOCIAL SECURITY UNDER THE ACT

One of the major problems faced by the migrant construction workers is the lack of social protection. The Act confers hardly any protection on contingencies like unemployment, maternity, employment injury, disability, old age, death of the worker etc.

⁶⁶ 2016 (3) KHC 498, 505, Paragraph 16. The contention of the owners was that they had no liability as the building was rented to the contractors who employed the migrants. The contractors denied their liability.

The workers cannot remit their contributions to the general welfare schemes due to financial constraints.⁶⁷ There is no permanent employer-employee relationship for migrant workers. Their work is casual and highly informal. So they cannot expect any schemes based on the contribution of the employers. State shall take the responsibilities to provide social protection to poor migrants. If livelihood options and employment schemes are promoted in poor areas and poor households, distress migrations can be reduced. There are no provisions for portable entitlements.⁶⁸

The Act is silent on the right to social security of women migrants. While economic factors cause male to migrate, the social causes induce female to migrate.⁶⁹ Marriage and dependency on male bread winner is considered as the major reasons for female migration.⁷⁰ As a result the upward mobility of women migrants is less compared to that of male migrant workers. Apart from the provision for equal pay for equal work the Act does not contain gender specific clauses.⁷¹

⁶⁷ See also V.M. Rao, D.Rajasekhar & J.Y. Suchitra, *Unorganised Workers Deprivation, Social Security Needs, Policy Implications*, 41 EPW, No.19, 1913, 1916 (May 13-19, 2006). The unorganized workers do not get regular income. Their income is very low. When they have to meet unexpected crisis like accident or sickness, they have to depend on money lenders entering into debt bondage. The death of the bread winner or inability to work due to old age makes them poorer, so they may not be able to remit their contributions to the schemes.

⁶⁸ See Ravi Srivastava, *Labour Migration, Inequality and Development Dynamics in India. An Introduction*, 54 IJLE SPECIAL ISSUE ON LABOUR MIGRATION AND DEVELOPMENT DYNAMICS IN INDIA, No.3, 384 (Jul.-Sept. 2011).

⁶⁹ See J.P. Singh, *Distance Pattern of Rural to Urban Migration in India*, 40 GENUS, No. 1\2, 119, 127 (GENNAIO-GIUGNO 1984). See also Amitabh Kundu, *Migration, Urbanization and Inter Regional Inequality : The Emerging Socio-Political Change*, 21 EPW, No.46, 2005, 2008 (Nov.15, 1986).

⁷⁰ See generally Mahendra. K. Premi, *Aspects of Female Migration in India*, 15 EPW, No.5, 714, 714-720 (Apr. 2, 1980).

⁷¹ § 16 of the Act.

The migration policy shall address gender related problems.⁷² The policy shall be flexible to adapt changes.⁷³ Migrant Women constitute one of the major groups of vulnerable female population.⁷⁴ Their family relations are also not stable. It is seen that they are sharing home with other workers without any security of a family life. The Act has no provisions for the protection of migrant children.

The Act protects the benefits available to the migrant workers under other labour laws. Section 22 makes the Industrial Disputes Act (1947) applicable to migrant workers. Rule 58 (Central) and Rule 57 (Kerala) say that migrant workmen or his dependants can make an application for legal aid in conducting proceedings under various labour welfare legislations. But in actual practice, the workers do not receive the benefits promised under these laws.⁷⁵

ISMW Act focus on working conditions rather than on social security. The Act is highly inadequate to protect the social security rights of interstate migrant construction workers of Kerala.

⁷² See Sundari.S, *Migration as a Livelihood Strategy, A Gender Perspective*, 40 EPW, No.22/23, 2295, 2301 (May 28-Jun.10, 2005). Study was conducted in Tamil Nadu. It was found that women were the victims of poverty more than the men in the household. They had to suffer various problems like wage cutting or termination of job for absenteeism, payment of lower wages than locals, job insecurity, lack of paid leave, medical benefit, increase in competition and sexual harassment. Though all women workers face these problems, migrant women workers are the worst victims.

⁷³ See *supra* note 33 at 146 - 150.

⁷⁴ See M.V. Shobhana Warriar, *Women at Work: Migrant Women in Fish Processing Industry*, 36 EPW, No.27, 3554-3562 (Sept. 15-21, 2001). The study reveals the unhealthy and unhygienic working condition and social insecurity of women migrants in unorganized sector.

⁷⁵ If the employer does not deposit the compensation with Commissioner, as required under the Employees's Compensation Act (1923), the compensation may not be paid. Even if claim is filed by the heirs, they could not take follow up actions due to long distance, language barrier, illiteracy, poverty etc. It will not be easy to prove the case and adduce evidence because the accidents may not even reported by the contractor. See *supra* note 3 at 324 - 328.

5.7. CONCLUSION

The Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act (1979) contains many beneficial provisions for the migrant construction workers. The Act supplements all other laws and agreements that are useful for the interstate migrant worker.

The Act covers only those persons who are recruited by a contractor. There is no formal procedure of recruitment for majority of migrant construction workers in Kerala. The workers get information of the opportunities in Kerala from their friends, neighbors or relatives and they merely accompany them. As such they are not documented as recruited by a licensed contractor. There is no one to shoulder their responsibility. The definition of the interstate migrant worker should be enlarged to cover all the migrant construction workers irrespective of the channel of migration.

It is true that Act and the Rules casts certain responsibilities on the contractors with regard to licence, registration of workers, payment of wages, residential accommodation, travel allowances ,workplace amenities etc. In reality the contractors are not performing their statutory duties. Only some of the workers are provided with pass book as mentioned in the Act. There are thousands of migrant construction workers who are not registered with the labour department. The Government is not effectively monitoring the implementation of the Act.

The Act casts certain duties on the principal employers also. They have to take registration and maintain registers showing the details of workers appointed by them, the nature of work performed and the conditions of service. But the employers are reluctant to follow the provisions of the Act.

The Act specifically provides that the migrant workers shall not be discriminated on conditions of work. The wages shall not be less than the minimum wages and shall be paid in cash always. In actual practice majority of the migrant construction workers are not paid equally with that of local workers. They are doing hazardous work without proper safeguards. The employers and the middlemen are taking advantage of the poverty and ignorance of the migrant construction workers. They work for long hours without proper rest. There is no provision for sufficient rest and leisure. The workers are not aware of various labour laws that protect their rights.

The migrant workmen are recruited and sent to work places by trains and buses without proper reservations. They are transported like goods and cattles. The journey allowances are not granted to them.

No Proper accommodation facility is provided to migrant construction workers. The inhuman accommodation leads to the erosion of mental and physical health of the worker. The public health is also affected.

One of the major limitations faced by the migrant workers is the language problem. The Act does not address to these problems.

The provisions providing for punishments are very light. It is easy for the contractor and employer to pay the fine than complying with the provisions.

There are no provisions for social security. There is no protection on contingencies like sickness, unemployment, old age, invalidity, maternity, death of the bread earner, etc. There are no provisions for the education and development of migrant children. Likewise the Act does not address the problems faced by the migrant women workers. There are no provisions for maternal care and welfare of women. There is no gender specific treatment.

The Government has granted the power to exempt certain establishments or class of establishments or class of contractors or interstate migrant workers from the operation of the Act. Wide discretion is granted to the Government on this area. The Act or Rules do not provide guidelines for exemption.

The Act does not consider the role of local authorities to protect the rights of internal migrants. The local authorities can play a significant role in collecting the data of migrant construction workers and in ensuring human accommodation.

The Act was enacted at a time when migration was not so wide as today. As the name suggest it is primarily intended to regulate the recruitment rather than protecting the social security rights of the workers. The Act is inadequate to protect the social security rights of migrant construction workers who have migrated to Kerala for their livelihood. The Act cannot guarantee the social protection envisaged by the human right documents and the Constitution.

CHAPTER VI

SOCIAL SECURITY UNDER THE BUILDING AND OTHER CONSTRUCTION WORKERS ACT (1996) ; A CRITICAL ANALYSIS

Majority of the interstate migrant workers in Kerala are employed in the construction sector.¹ Both skilled and unskilled persons get employment in the construction field. The construction work is inherently hazardous and risky.² The accidents at worksites have claimed lives of many migrant workers. The employers as well as the contractors who are responsible for ensuring the safety of the workers are grossly negligent in providing safety measures. The miserable conditions of the construction workers are explained by the National Commission on Labour in the following words.

Most of the workers in the construction industry are employed on casual basis. Unstable employment, earnings and shifting of work place are the basic characteristics of work for construction workers. Though child

¹ See M. P. JOSEPH, D. NARAYANA & C. S. VENKITESWARAN, DOMESTIC MIGRANT LABOUR IN KERALA 15 (2013).

² See the statement of objects and reasons of The Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act (1996).

Building and other construction workers are one of the most numerous and vulnerable segments of the unorganised labour in India. The building and other construction works are characterised by its inherent risk to the life and limb of the workers. The work is also characterised by its casual nature, temporary relationship between employer and employee, uncertain working hours, lack of basic amenities and inadequacy of welfare facilities. In the absence of adequate statutory provisions, the requisite information regarding the number and nature of accidents is also not forthcoming. In the absence of such information, it is difficult to fix responsibility or to take any corrective action.

labour is prohibited, children are engaged in unskilled jobs. Women engaged in construction work are the most exploited. Frequent changes in their work and instability deprive them and their children of primary facilities like health, water, sanitary facilities and education. In most cases safety norms are violated. They are often not given maternity benefits, though obligatory. Temporary residential sheds put up for construction workers lack minimum facilities. Creche facilities are not available at work sites and social security benefits are virtually nonexistent because of various constraints such as lack of stable nexus between employer and employee, instability of employment, poor and uncertain earnings of workers, unreliable duration of work etc. There is violation of laws on minimum wage, equal wage, child labour, contract labour and interstate migrant workers. Construction workers remain invisible, vulnerable, voiceless and ununionised.³

The construction work is seasonal. In rainy season, the demand of labour is reduced. It will adversely affect the social security of migrant construction labour.⁴

The Parliament has passed a special legislation namely the Building and other Construction Workers (Regulation of Employment and Conditions of

³ See Paragraphs 7.110, 7.111, 7.113. & 7.112 of the Report of the Second National Commission on Labour (2002). See also NCEUS, Paragraph 6.17 of the Report of the Conditions of Work and Promotion of Livelihoods in the Unorganised Sector 97 (2007).

Migrant workers, particularly at the lower end, including casual labourers and wage workers in industries and construction sites, face adverse work as well as living conditions. This group is highly disadvantaged because they are largely engaged in the unorganized sector which involves longer working hours, poor living conditions, social isolation and inadequate access to basic amenities.

⁴ See S.N. Guha Thakurta, *Employment in the Construction Industry, Does It Have to be So Unstable ?*, 5 EPW, No.12, 521, 522 (Mar. 21, 1970).

Service) Act in the year 1996. The Central Government and the Kerala Government had framed Rules in the year 1998.⁵

According to Madan. B. Lokur J.,

“The Act is a welfare legislation intended and enacted for the benefit of the unorganized sector of building and construction workers. It has a strong flavour of social justice and is a serious attempt by Parliament to ensure that the workers are not exploited because of their poverty.”⁶

The Act constituted the Building and other Construction Workers Welfare Fund to provide social security of construction workers. Parliament has enacted the Building and Other Construction Workers Welfare Cess Act (1996) to regulate contribution of cess to the Welfare Fund.⁷ The Central Government has framed the Building and Other Construction Workers Welfare Cess Rules in the year 1998. This chapter focuses on the social security measures available to the interstate migrant construction workers under the Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act (1996)⁸ and the Rules made there under.

⁵ In *Dewan Chand Builders and Contractors v Union of India*, (2012)1 SCC 101,105-106(India), D.K Jain J., has observed that the objective of the Act is the welfare of building and construction workers which is directly related to right to live with basic human dignity under art.21 of the Constitution.

⁶ See *National Campaign Committee for Central Legislation on Construction Labour v Union of India*, 2018-III-LLJ-13 (SC), Paragraph 8. See also *Prabhakara Reddy & Company v State of M.P.*, AIR 2015 SC 3293,3295(India). Sivakirti Singh J., observed that the Act was passed to reduce the exploitation of workers.

⁷ The Constitutional validity of the Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act (1996), Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Rules (1998) Building and Other Construction Workers Welfare Cess Act (1996), Building and Other Construction Workers Welfare Cess Rules (1998) were upheld by the Supreme Court in *Builders Association of India v Union of India*, ILR (2007) Del 1143.

⁸ Hereinafter referred as Act.

6.1. THE BUILDING AND OTHER CONSTRUCTION WORKERS (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) ACT (1996)

The provisions of the Act are intended to regulate the employment and conditions of service of building and other construction workers and to provide for their social security, safety, health and welfare measure.

Sections 6 to 10 of the Act deal with registration of establishments⁹. The employer has to take registration to employ construction workers.¹⁰

6.2. THE BUILDING AND OTHER CONSTRUCTION WORKERS WELFARE BOARDS

The important bodies under the Act are Advisory Committees, Expert Committees and Building and other Construction Workers Welfare Boards.

⁹ According to § 2(j)

Establishment means any establishment belonging to, or under the control of Government, anybody corporate or firm, an individual or association or other body of individuals who or which employs building workers in any building or other construction work and includes an establishment belonging to a contractor, but does not include an individual who employs such workers in any building or construction work in relation to his own residence the total cost of such construction not being more than Rs.10 lakhs.

¹⁰ See Kerala Rules 25 to 31. As per Rule 26, the certificate of registration is non transferable. The employer cannot employ workers more than that is specified under the certificate. Any change in the number of workers or conditions of work shall be intimated to the registering authority within fifteen days.

There shall be Advisory Committees at the Central and State level to advise the Government on such matters arising out of the administration of the Act.¹¹ Section 5 of the Act empowers the Government to constitute Expert Committees with persons having special knowledge in building or other construction works to advise the Government in making Rules.

According to section 18 every State Government shall constitute a Welfare Board with a Chair person, a member nominated by Central Government and other members not exceeding 15 as appointed by State Government.¹² The Kerala Building and other Construction Workers Welfare Board consists of Chairman appointed by the Government, a member nominated by the Central Government, not more than 5 persons representing the building and other construction workers nominated by Government, whom one shall be the Chief Inspector of Inspection of Building & Construction of the State, one shall be the representative of Finance Department, one shall be representative of Law Department and one shall be the representative of

¹¹ As per § 3, the Central Government has to constitute Central Building and other Construction Workers Advisory Committee consisting of Chairperson, three members of Parliament, Director General and not more than thirteen but not less than nine persons representing the employers, building workers, association of architects, engineers, accident insurance institutions and other interests who are nominated by Government. Director General is the ex-officio member. § 4 read with Kerala Rules 11 to 24 empowers the State Government to constitute State Building and other Construction Workers Advisory Committee consisting of Chairperson, two members of State legislature, a nominee of Central Government, the Chief Inspector, not more than eleven but not less than seven person nominated by the State Government representing the employers, building workers, association of architects, engineers, accident insurance, institutions and other interests. The Chief Inspector is the ex-officio member.

¹² See Rule 265 & Rule 266, Part V, Chapter XXXI of The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Kerala Rules, 1998. Rule 270 fixes the quorum for meeting as six out of whom one shall be from among persons nominated in their official capacity. Rule 275 provides for the appointment of Sub Committee consisting of Chairperson of Board, representatives of the employers, the building workers and the Government. The term of office is one year.

Labour Department in the Secretariat. One of the nominated members shall be a woman and the number of nominees of employers, employees and Government shall be equal.

The tenure of office of Chairman and members of Board other than the official members shall be 3 years. The Board shall meet once in two months.

6.3. BUILDING AND OTHER CONSTRUCTION WORKERS WELFARE FUND

Section 24 provides for establishment of Welfare Fund.¹³ According to section 12,

Every building worker who has completed eighteen years of age but has not completed sixty years of age and who has been engaged in any building and construction work for not less than ninety days during the preceding 12 months is eligible for registration as a beneficiary of Fund¹⁴.

¹³ Rule 281 (Kerala) provides for the constitution of Kerala Building and Construction Workers Welfare Fund. The grant or loan or any advance made by the Government of India, State or local authority shall be credited to Fund. All contributions shall be deposited. It also contains the sums that are received from other sources. Rule 282 states that all sums standing to the credit of Kerala Construction Workers Welfare Fund established under Kerala Construction Workers Welfare Fund Act (1989), shall be transferred and credited to the Fund.

¹⁴ See Rule 283 (Kerala). The membership of workers in any other Board immediately before his registration will be considered for calculating the period of 3 years.

Every building worker¹⁵ registered as a beneficiary shall be entitled to the benefits from the Fund. According to section 13, the Board shall issue an identity card to the worker with his photograph. The employer shall authenticate the details of the work done by the beneficiary in the identity card.

A registered beneficiary has to contribute to the Fund till he attains the age of sixty years.¹⁶ If any beneficiary is unable to make regular contributions due to any economic constraints, the Board can waive the payment of contribution for a period not exceeding three months at a time.¹⁷ If the worker fails to pay the contribution for a continuous period of not less than one year, he shall cease to be a beneficiary.¹⁸

¹⁵ § 2(d) defines building or construction work as the construction, alteration, repairs, maintenance or demolition of or in relation to buildings, streets, roads, railways, tramways, airfields, irrigation, drainage, embankment and navigation work, flood control works (including storm water drainage works), generation, transmission and distribution of power, water works (including channels for distribution of water), oil and gas installations, electric lines, wireless, radio, television, telephone, telegraph and overseas communications, dams, canals, reservoirs, water courses, tunnels, bridges, viaducts, aqueducts, pipeline, towers, cooling towers, transmission towers and such other work as may be specified in this behalf by appropriate government by notification, but does not include any buildings or other construction work to which the provisions of the Factories Act(1948) or the Mines Act (1952) apply. § 2(e) defines a building workers as a person who is employed to do any skilled, semi skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be expressed or implied in connection with any buildings or other construction work but does not include such person who is employed mainly in a managerial or administrative capacity or who being employed in a supervisory capacity draws wages exceeding 1600/- per mensem or exercise, either by nature of duties attached to office or by reason of the powers vested in him, functions mainly of a managerial nature.

¹⁶ §16 of the Act read with Rule 284 (Kerala).

¹⁷ §16 of the Act .The worker can authorize the employer to remit his contribution by deducting the amount from his wages.

¹⁸ § 17 of the Act. The Act allows the Board to accept the arrears of contribution if the Board is satisfied that there is a valid reason for nonpayment. His registration can be restored.

Section 3 of the Building and Other Construction Workers' Welfare Cess Act (1996) imposes cess on the cost of construction.¹⁹ Central Government had framed Rules namely, The Building and Other Construction Workers Welfare Cess Rules (1998). The cess collected from the construction activities forms the major source of revenue of the Board. It can be collected as a deduction at source when employer is Government or public sector undertaking. It is collected by the local authority in advance at the time of granting permission for construction work.²⁰ The rate of cess will not exceed two percentage but not less than one percentage of the cost of construction.²¹ The cess shall be remitted to the Fund after realizing the cost of collection not exceeding one percentage of the amount collected.²² Interest at the rate of two percentage is leviable for late payment.²³

6.4. SOCIAL SECURITY BENEFITS UNDER THE ACT

There is strong criticism against the poor implementation of the welfare provisions by some States. Various nongovernmental associations have brought

¹⁹ As per Rule 3 of Building and Other Construction Workers Welfare Cess Rules (1998), cost of construction shall include all expenditure incurred by an employer in connection with the building or other construction work. It shall not include cost of land and any compensation paid or payable to a worker or his kin under the Employees Compensation Act (1923).

²⁰ As per Rule 4 (4), while applying for approval of local authority for construction work, the applicant has to submit a crossed demand draft for the amount of cess payable on the estimated cost of construction.

²¹ Cess at the rate of one percentage of the cost of construction incurred by the employer is to be levied and collected, vide S.O. 2899, dated 26th September, 1996.

²² Rule 5 says that the amount collected shall be remitted to the Board within thirty days.

²³ § 8 of the Building and Other Construction Workers Welfare Cess Act (1996). According to Rule 4

Cess shall be paid within thirty days of completion of the work or within thirty days of the date on which assessment of cess payable is finalised, whichever is earlier. Where the duration of the project or construction work exceeds one year, cess shall be paid within thirty days of completion of one year from the date of commencement of work and every year thereafter at the notified rates on the cost of construction incurred during the relevant period.

the matter before the Supreme Court and the Court issued certain directions for the proper implementation of the Act.²⁴ The welfare measures provided by the Kerala Building and Other Construction Workers Welfare Board and Fund are more advanced than any other States.

According to section 22 of the Act, the major functions of Welfare Boards includes provisions for immediate assistance to beneficiaries in case of accident, the payment of pension, sanction of loans and advances for construction of a house, payment of the amount in connection with premia for group insurance scheme, giving educational scholarships for children of beneficiaries, granting medical expenses for treatment of specified diseases of a beneficiary or dependent etc. If any local authority or any employer undertakes any scheme for the welfare of building workers which is approved by State Government, the Board may grant loan or subsidy or grants-in-aid for such schemes.

Rule 288 of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Kerala Rules, (1998) provides for maternity benefit. The women employees who are the beneficiaries of the Fund shall be paid maternity benefit for two occasions.

Rule 289 (Kerala) provides for the payment of pension and Rule 290 (Kerala) provides for the procedure. A member who has been working as a

²⁴ See *National Campaign Committee for Central Legislation on Construction Labour v Union of India*, (2009) 3 SCC 269 (India), *National Campaign Committee for Central Legislation on Construction Labour v Union of India*, (2011) 4 SCC 647 (India), *National Campaign Committee for Central Legislation on Construction Labour v Union of India*, (2012) 3 SCC 336 (India), *National Campaign Committee for Central Legislation on Construction Labour v Union of India*, AIR 2016 SC 2953 (India) and so on .

building worker for not less than one year shall be entitled to pension on attaining 60 years of age. Rule 292 (Kerala) provides for disability pension. Disability pension shall be granted to the beneficiary who is permanently disabled due to paralysis, leprosy, tuberculosis, accident etc. He is eligible for exgratia payment depending upon the percentage of disability.

According to Rule 291(Kerala), the Board shall give advance for the outright purchase of a house or for the construction of house. The beneficiary should have membership in the Fund continuously for 5 years and shall have 15 years service for superannuation.

Rule 293 (Kerala) provides loans for the purchase of tools. The member shall have completed 3 years membership in the Fund and shall pay contribution. The beneficiary should not have completed 55 years of age.

Rules 294 (Kerala) & 295 (Kerala) explain funeral assistance. Funeral assistance shall be granted to nominees or dependents of deceased members. Rule 301(Kerala) provides that the spouse is entitled to family pension at the rate of 50% of pension on the death of a pensioner or of a member who attained the age of 60 years and becomes eligible for pension. Rule 303(Kerala) provides that the amount of contributions standing to the credit of a deceased member shall be given to the nominee or legal heir.

Rule 295 A (Kerala) provides for accident benefit. Board may grant accident death benefit for the death of a member due to an accident while he is actually on duty at his workplace. Accident benefit is available for total permanent disablement. Rule 298 (Kerala) provides for the hospitalization

benefits. Board may sanction financial assistance to the beneficiaries who are hospitalized for 5 or more days due to accident or any disease. The benefit shall be given to those beneficiaries who met with accident and put in plaster at residence. Financial assistance depends on the percentage of disability due to accident.

Rule 296 (Kerala) provides for scholarships or cash awards for the children of beneficiaries in each district who secures highest marks in SSLC. Rule 297(Kerala) provides for the establishment of educational institutions to provide job oriented technical education to the children of the beneficiaries. Rule 299 (Kerala) lays down the conditions under which children of members are eligible for financial assistance for education. Rule 300 (Kerala) provides for the financial assistance for marriage of building workers and the marriage of children of building workers. The worker shall have continuous membership for 3 years.

The migrant construction workers require social protection than any other workers because their condition is worse than other workers.²⁵ Social

²⁵ See NCEUS, Paragraph 6.24 of the Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector (2007).

Deplorable living conditions increase the health hazards of the migrant workers making them more susceptible to disease and infection because of the unhygienic living conditions. Occupational health problems are also high especially for those working at the construction sites, quarries and mines as lung related health issues become common among them. Employers do not take care of the safety measures which increase the rate of accidents. Temporary status of the workers limits their access to public health services and programmes. Women are not given maternity leave. That childcare facilities and crèches are also not available forces the women to bring children to workplace and to expose them to health hazards.

security measures envisage freedom from economic fear.²⁶ According to the opinion of Labour Commission,

“State shall bear the basic responsibility to provide social protection for poor people.”²⁷

The social security measures for migrant construction workers shall include skill upgradation and training programmes. Proper training will increase their job opportunities and status in life.²⁸ Providing extra resources to improve their skills is an investment for the future of workers and economy of the State. It shall not be treated as waste of public money.²⁹ The unskilled migrant workers in the construction sector are always treated unfavourably. The Building and Other Construction Workers Welfare Board and Fund provides many social security benefits to the construction workers in Kerala. A sizeable population of the local construction workers do enjoy the benefits. But the migrant construction workers in Kerala could not utilize social security benefits due to their informal nature of work.

²⁶ See N.D. KAPOOR, HANDBOOK OF INDUSTRIAL LAW 127 (2004).

²⁷ See Paragraph 8.32 of the Report of the Second Labour Commission (2002).

We recommend a system in which the State bears the responsibility for providing and ensuring an elementary or basic level of security and leaves room for partly or wholly contributory schemes. This will mean that the responsibility to provide a floor will be primarily that of the State and it will be left to individual citizens to acquire higher levels of security through assumption of responsibility and contributory participation.

²⁸ See Priya Deshingkar & John Farrington, *Circular Migration and Multilocational Livelihood Strategies*, in SOCIAL PROTECTION AND MIGRANT SUPPORT 307-308 (Priya Deshingkar & John Farrington ed., 2009).

²⁹ See IAN GOLDEN, GEOFFREY CAMERON & MEERA BALARAJAN, EXCEPTIONAL PEOPLE, HOW MIGRATION SHAPED OUR WORLD AND WILL DEFINE OUR FUTURE 276 (2011).

6.5. CONDITIONS OF SERVICE OF BUILDING WORKERS

The Act and the Rules provide for the fixation of working hours, adequate rest, fair wages, payment for overtime, supply of fresh water, sufficient sanitation facilities, accommodation, welfare of female workers, safety mechanism and so on.

6.5.1. Fixation of working hours and wages

Sections 28 and 29 of the Act fix the working conditions of building and construction workers. Government is given the power to fix number of hours of work, days of rest and payment of remuneration in respect of such days of rest. The working hours fixed for a construction worker is 8 hours a day and 48 hours a week. The building worker shall not be required to work continuously for more than 4 hours unless he had an interval of rest of not less than half an hour. The working day of building worker inclusive of intervals of rest, shall not spread over more than 10 hours on any day. Rule 243 states that a building worker shall be entitled to a day of rest in every week.

If he has to work on that rest day, a substituted day of rest shall be given.³⁰ The employer has the responsibility to pay the wages in time³¹. Section 29 provides for wages for overtime work. If a building worker is required to work on any day in excess of number of hours constituting a normal working day, he is entitled to wages at the rate of twice his ordinary rate of wages.³²

³⁰ Chapter XXVII, Kerala Rule 242 provides for working hours.

³¹ See § 45.

³² See Rules 262 to 264 (Kerala).

The working conditions shall ensure the development of a migrant construction worker and his livelihood.³³ The migrant workers shall be free to move and choose their employment. The mobility requires a minimum level of subsistence. There shall be the guarantee of minimum health and welfare of workers³⁴. In actual practice, the migrant construction workers suffer from long hours of work. They do not get overtime wages. Their wages and working hours are flexible.

6.5. 2. Amenities at workplace

According to section 32 the employer has the duty to ensure whole some drinking water. Section 33 prescribes that the employer should provide sufficient latrines and urinals at the construction site.³⁵ Section 37 empowers the Government to make Rules requiring the employer to maintain canteen in every place where the number of workers employed is not less than two hundred and fifty.³⁶

³³ In *Air India Statutory Corporation v United Labour Union*, AIR 1997 SC 645,674 (India), the Supreme Court observed that

All facilities to poor people are fundamental means to development, to live with minimum comforts, food, clothing, shelter and health. Due to economic constraints, though the right to work was not declared as a fundamental right, right to work of workman, lower class, a middle class and poor people is a means to development and a source of livelihood.

³⁴ BILL JORDAN & FRANK DUVELL, *MIGRATION, THE BOUNDARIES OF EQUALITY AND JUSTICE* 129 (2003).

³⁵ As per Central Rule 5(9) employer shall maintain the latrines, urinals, washing facilities and canteen in a clean and hygienic condition. The canteen shall be located in a place away from the latrines and urinals and shall be easily accessible to the building workers. The Kerala Rules 251 to 253 provides for the maintenance of urinals and latrines. Rules 254 provides for washing facilities.

³⁶ Kerala Rule 255 provides for canteens. Rule 256 provides for dining hall. Rule 257 provides for the maintenance of furniture for the running of canteen. Rules 258 to 260 explain nature and charges of the foodstuff. *See also* Central Rules 244-247.

The workplace amenities are essential to keep the health and productivity of the worker. The migrant construction workers are disgraced with respect to fresh water facilities, washing facilities and sanitation.

6.5. 3. Right to accommodation

Section 34 states that the employer shall provide temporary living accommodation free of costs to all workers during the period of work within the worksite or as near to it. The temporary accommodation shall have separate cooking place, bathing, washing and lavatory facilities. The employer shall demolish the temporary structure of living accommodation on completion of work.

The accommodation provided to the migrant construction workers is deplorable. The shelter is not suitable to climate. The workers live overcrowded without basic facilities.

6.5. 4. Welfare of female employee

The Act contains some provisions for the welfare of the women workers. Section 35 provides for the setting up of crèches for babies.

“Such rooms shall be adequately lighted and ventilated, be maintained in a clean and sanitary condition, and be under the charge of women trained in the care of children and infants.”

Rule 30 (Kerala) fixes the working hours of female employee. The female workers are always employed in certain gender specific areas where the chance of upward mobility is very less.³⁷ They lack social security and social status. The gender based discrimination is more prevalent in construction

³⁷ See Sow.J.B.Auradkar, *Human Rights of Women Construction Workers in Maharashtra*, in *DIALECTICS AND DYNAMICS OF HUMANRIGHTS* 271-272 (Mrs.Annie John ed., 2012).

sector.³⁸ The women migrant workers in the construction industry face insult from the society, discrimination at the work place, lack of support from the home etc.

6.5. 5. Safety and Health of Workers

Section 31 of the Act prohibits the employer to engage a worker who is deaf or who has a defective vision or has a tendency to giddiness in any work which is likely to involve the risk of any accident. Section 36 describes first aid facilities.³⁹

According to section 38, where the number of workers ordinarily employed is five hundred or more, the employer shall constitute a Safety Officer and a Safety Committee giving equal representation of employers and workers.⁴⁰ The functions of the Safety Committees includes the investigation in the cause of accidents and unsafe practices, suggestion of remedial measures, giving training on safety measures, to look in to the health hazards associated with work, reviewing welfare amenities and so on. Rule 225 (Kerala) explains the occupational health services for building workers.

Section 39 states that Safety Committee shall make inquiry of accidents that cause death or bodily injury making the worker unable to work for 48

³⁸ See Bipasha Baruah, *Women & Globalisation ; Challenges and Opportunities Facing Construction Workers in Contemporary India*, 20 DEVELOPMENT IN PRACTICE, No.1, 31, 41-42 (Feb.2010).

³⁹ See Rule 227 (Kerala).

⁴⁰ See Chapter VII of the Act and Kerala Rules 207 to 209.

hours or more.⁴¹ If accident causes death of five or more persons, the inquiry shall be made within one month of the receipt of notice of accident.

Board has the duty to conduct medical examination of the building worker before registration and thereafter at regular intervals. There shall be special investigation for the diagnosis of occupational diseases, X-rays and pathological lab investigation free of cost. The Construction Medical Officer appointed under the Rules shall provide immunization services, health education, referral services and so on.⁴²

Kerala Rules 38 to 241 contains elaborate provisions with regard to the safety of workers. It spread over chapters VI to XXVI.⁴³ The enforcement mechanism is the inspecting staff consisting of Director General, Chief

⁴¹ Rule 209 of the (Kerala) casts a duty on the employer to report the cases of fatal accidents and disablement of workers to authorities like Board, Safety Committees and Director of Factories.

⁴² See Kerala Rule 221.

⁴³ Chapter II Rules 3 to 10 explain the responsibilities and duties of employers, architects, project engineers, designers and building workers. Chapter VI deals with the provisions for the safety and health of workers. Rules 38 to 52 deal with the general provisions for safety. Chapter VII, Rules 53 to 79 provide the safety measures in respect of lifting appliances and gear. Chapter VIII, Rules 80 to 88 explain the safety measures to be followed in respect of Runways and Ramps. Chapter IX, Rules 84 and 85 explain the procedures to be followed when there is work on or adjacent to water. Chapter X deals with transport and earth moving equipment (Rules 86 to 94). Chapter XI explains the safety measures to be taken for concrete work (Rules 95 to 106). Chapter XII provides for the safety measures to be taken while making demolition. Chapter XIII, Rules 118 to 168 provide for guidelines for tunneling works and excavation. Chapter XIV provides for construction, repair and maintenance of steep roof (Rules 169 to 171). Chapter XV provides for safety measures to be adopted while using ladders (Rules 172 to 174). Chapter XVI provides for the safety measures to be adopted while using catch, platform and boardings, chutes, safety belts and nets. (Rules 175 to 180). Chapter XVII, Rules 181 to 186 provides for the standards of structural frame and frame work. Chapter XVIII, Rules 186 and 187 provide for stacking and unstacking. Chapter XIX, Rules 188 to 205 provide for the standards of scaffold construction. Chapter XX provides for safety measures to be taken while using cofferdams and caissons (Rule 206). Chapter XXII, Rules 210 and 211 provide for the handling of explosives. Chapter XXIII, Rules 212 to 220 explain the safeguards on piling. Chapter XXIV, Rules 221 to 228 provides for the medical facilities that are to be provided to workers. Rules 233 to 240 provide for the general precautionary measures that are to be taken on excessive noise, vibration, fire, fencing of motors, excessive weight lifting and carrying.

Inspector and Inspectors.⁴⁴ Penalty is provided for violation of the safety provisions.⁴⁵ According to Rule 317, the Inspector can pass Prohibition Order, if he is satisfied that the work site or construction activity is carried in a dangerous way or that it is likely to affect the safety or health of the workers or public. This is a drastic power vested in the authority to enforce the provisions of the Act.

There are elaborate Rules that provide safety of workers. But the unorganized migrant construction workers do not get the benefit of these provisions. The employers recruit migrant workers through the contractors. The contractors appoint sub contractors under them. Neither the contractors nor the sub contractors are considerate on the problems faced by the interstate migrant workers recruited by them. In order to increase the profit, they adopt all possible measures to deny the welfare measures. Safety appliances are not adequately installed to reduce the cost of production.

6.6. CONCLUSION

The interstate migrant workers are employed in the construction sector in various capacities like contractor, mason, concrete worker, tile worker, painter, electrician, plumber, lift operator etc. As mentioned in the statement of objects and reasons of the Act, the construction and building work has some inherent risks. Hence utmost care is required to assure the safety as well as social security of workers. The Rules make elaborate provisions for the safety

⁴⁴ See § 42 & § 43 of the Act.

⁴⁵ See §§ 47 to 49 of the Act. Rules 315 to 317 (Kerala) lay down the powers of the inspecting staff.

of workers. There are provisions for the appointment of Safety Officers, Safety Committee and Inspecting Staff to enforce the safety measures.

Even before the enactment of Central Act the Welfare Boards were functioning in Kerala under the State legislation. Kerala is the first State to implement the provisions of the Act. The benefits provided by the Fund includes maternity benefit, pension, disability pension, advance for purchase or construction of house, loan for purchase of tools, payment of funeral assistance, payment of death benefit, educational scholarships, medical assistance etc.

The Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act (1996) is one of the most benevolent legislations that provide social protection to construction workers. It is unfortunate that though the majority of construction workers in Kerala are migrants, the substantial population of migrants do not enjoy the social protection offered by the Act. The membership of the Board is subject to certain conditions. It is necessary that the person should have worked as building worker for at least 90 days in the previous year. That means the worker shall be registered at least for 90 days in the previous year. The employment of the interstate migrant workers is casual and scattered. Majority of the migrant workers are irregular workers and return home after saving some money. They may not be able to produce the proof of required day's service due to poor documentation. They do not get the services of trade unions because of the lack of membership. Only those migrant workers who are

employed under a particular employer for a considerable period of time will get the benefits under the Welfare Fund.

Another obstacle is the requirement of payment of contribution by the beneficiary. Though the amount is comparatively less they cannot make regular contributions to the Fund because their employment is irregular. In the event of death or disability due to the accidents the dependants or the migrant construction workers could not get adequate remedy.

They are also exploited in respect of accommodation, wages, rest, leisure, health care, fresh water, sanitary facilities, etc. The provisions for workplace amenities are not implemented for the benefit of migrant construction workers. The unhygienic living conditions make them more susceptible to diseases. Occupational health problems like respiratory diseases are common among construction workers. The informal nature of employment, the migratory nature, absence of formal employer employee relationship, lack of membership in trade unions, ignorance, illiteracy, inability to pay regular contributions etc deprives the migrant construction workers of the benefits under the Act.

CHAPTER VII

SOCIAL SECURITY UNDER GENERAL LABOUR LEGISLATIONS

The legal system shall be subordinate to social justice. Laws are the means to achieve social justice for vulnerable population.¹ Social security is based on the ideals of social justice and dignity.² It is essential for protection of workers and the economy.³ It can prevent social exclusion and promote social inclusion.⁴

Parliament has drafted various laws to secure labour welfare in tune with the human rights documents and the Constitution of India.⁵ There are social security legislations like The Employees Compensation Act (1923), The Payment of Wages Act (1936), The Employees State Insurance Act (1948), The Minimum Wages Act (1948), The Employees Provident Fund and other

¹ See R.G.CHATURVEDI, JUSTICE : NATURAL, SOCIAL, ECONOMIC AND POLITICAL 523 (1990).

² The concept of social security has received worldwide attention when United States of America has passed the Social Security Act in the year 1935. See Saxena, *Social Justice & Constitution*, in LAW AND CHANGING SOCIETY 190-193 (Manju Saxena & Harish Chandran ed., 1999).

³ See India Labour & Employment Report 153 (2014). "Social security in the form of an assured social minimum can promote the self employed workers lacking individual or household security in undertaking more productive investments, which are also likely to be more risky."

⁴ Social security through its redistributive character plays an important role in poverty reduction and alleviation, preventing social exclusion and promoting social inclusion. See Paragraph 3 of the General Comment No.19 of the Committee on Economic, Social and Cultural Rights, on The Right to Social Security (art. 9), E/C.12/GC.19 dated 4/2/2008.

⁵ The experience of British Government from the World War I, the Russian Revolution 1917, the dissatisfaction of the Indian working class, the increasing political unrest in the country, the establishment of ILO in 1919, formation of All India Trade Union Congress in 1920 are some of the factors that contributed to the enactment of labour legislations in India. See A.M.SARMA, INDUSTRIAL JURISPRUDENCE AND LABOUR LEGISLATION 21 -23 (1996). See also PREETA JOSHI, INTERNATIONAL LABOUR ORGANISATION AND ITS IMPACTS ON INDIA 66-68(1985).

Miscellaneous Provisions Act (1952), The Maternity Benefit Act (1961), The Payment of Bonus Act (1965), The Contract Labour (Regulation and Abolition) Act (1970), The Payment of Gratuity Act (1972), Bonded Labour System Abolition Act (1976), Equal Remuneration Act (1976), Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act (1979)⁶ and The Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act (1996).⁷ Social security is the most valuable right of migrant construction workers because they belong to poorest families which require social protection.⁸

7.1. EXISTING SOCIAL SECURITY BENEFITS UNDER LABOUR LEGISLATIONS

There are certain social security legislations in India that provide for employment injury benefit, survivors benefit, sickness benefits, maternity benefits, old age benefits, medical benefits, income security, reasonable working hours, amenities at workplace, freedom of employment and gender equality.

⁶ See Chapter V.

⁷ See Chapter VI.

⁸ See Chandra Prakash Azad & Bhavana Jha, *Changing Pattern of Employment and Migration Among Tribal's Woman and its Socio-Economic Effects – A Case Study of Santhal Pargana of Jharkhand*, in EMPLOYMENT TRENDS AND DISPARITIES ; SECTORAL, REGIONAL, GENDER AND SOCIAL GROUPS 254 (Aparna Bhardwaj ed., 2014). Migrants usually come from poor families with no future prospectus for improving living standards. Their social and political status is inferior to other workers.

But the social security rights guaranteed under some legislations are accessible to organized sector only.⁹ This chapter analyses the extent and adequacy of social security and other labour welfare measures available to migrant construction workers through the existing legislations. The chapter also tries to throw light on the areas where social security rights are deficit.

7.1.1. Employment injury benefit and interstate migrant construction workers

A welfare State cannot be inactive when the workers suffer from dangers in workplace.¹⁰ Employees Compensation Act (1923) states the liability of the employer to pay compensation to the worker when there is an employment injury in the course of his employment.

7.1.1.1. Employees Compensation Act (1923)

According to section 3 of Employees Compensation Act (1923) the employer¹¹ is liable to pay compensation when a personal injury is caused to

⁹ According to § 1(3) of Payment of Bonus Act (1965), the Act applies to every factory and establishment in which 20 or more persons are employed on any day during the accounting year. The concept of bonus is unknown to the unorganised workers like interstate migrant construction workers. The Employees Provident Fund and other Miscellaneous Provisions Act (1952) and Payment of gratuity Act (1972) guarantee old age benefits for the workers of organised sector. As per § 5 of The Maternity Benefit Act (1961), woman is entitled to maternity benefits only when she has actually worked for a period of not less than 80 days in the twelve months immediately preceding the date of her expected delivery. The employment of women migrants in the construction sector is highly casual and precarious. She cannot fulfill the eligibility criteria of the Maternity Benefit Act (1961) and hence devoid of maternity benefits under the Act. The Employees State Insurance Act (1948) is one of the best social security legislations that is ever drafted in India as it recognizes and implements the major branches of social security that are recognized internationally. § 1(2) states that the Act applies to all factories including the factories belonging to the Government other than seasonal factories. The scheme requires registration, continuous service and payment of contribution from the employee as well as the employer. The interstate migrant construction workers cannot point out a permanent employer. They lack documentation and continuous services. Hence the workers are devoid of benefits guaranteed under the ESI Act.

¹⁰ See S.K.PURI, AN INTRODUCTION TO LABOUR AND INDUSTRIAL LAWS 253 (2005).

¹¹ Employer is defined under § 2(e) of Employees Compensation Act (1923).

an employee by accident arising out of and in the course of his employment. The employer shall not be liable to pay compensation if the injury does not result in total or partial disablement of an employee ¹² for a period exceeding three days.¹³ If the accident is caused by an act under the influence of drug or drink of the worker or accident arising from the willful disobedience to a safety order or the accident resulting from the willful removal or disregard of any safety guard, the employer is not liable to pay compensation.¹⁴

Employment injury is very common in construction site. The provisions of Employees Compensation Act (1923) are applicable to migrant construction workers in theory only.

7.1.2. Survivors benefit of interstate migrant construction workers

On the death of the worker, the survivors shall get social protection from a welfare State. Employees Compensation Act (1923) states the liability of the

¹² According to § 2 (1) (dd), Employee means a person, who is -

- (i) A railway servant as defined in clause 34 of § 2 of Railways Act (1989) not permanently employed in any administrative district or sub-divisional office of a railway and not employed in any such capacity as specified in schedule II : or,
- (ii)
 - (a) a master, seaman or other member of the crew of a ship,
 - (b) a captain or other member of the crew of an aircraft,
 - (c) a person recruited as driver, helper, mechanic, cleaner, or in any other capacity in connection with a motor vehicle,
 - (d) a person recruited for work abroad by a company and who is employed outside India in any such capacity as is specified in Schedule II and the ship, aircraft or motor vehicle, or company, as the case may be, is registered in India : or
- (iii) Employed in any such capacity as specified in Schedule II whether the contract of employment was made before or after passing of this Act and whether such contract is expressed or implied, oral or in writing, but does not include any person working in the capacity of a member of the Armed forces of Union and any reference to any of employee who has injured shall, where the of employee is dead include a reference to his dependents or any of them.

¹³ § 2(g) of the Employees Compensation Act (1923) defines partial disablement and § 2(1) defines total disablement.

¹⁴ Schedule I, Part I lists out the injuries that are deemed to result in permanent total disablement. Schedule I, Part II lists out the injuries that are deemed to result in permanent partial disablement.

employer to pay compensation to the dependants when the worker dies in the course of his employment.

7.1.2.1. Employees Compensation Act (1923)

Before the enactment of the Employees Compensation Act (1923), if the worker had died, the dependants would have to struggle for their livelihood.¹⁵

The employer could rely on doctrines like contributory negligence, common employment or voluntary assumption of risk to escape from liability.¹⁶

The liability of the employer under section 3 of the Employees Compensation Act (1923) is absolute when the accident results in death. He cannot invoke the exceptions provided under the Act. Casual relationship between the cause of death and the nature of duties is sufficient to claim compensation.¹⁷ When the injury results in the death of the worker the employer has an additional liability to deposit the funeral expenses with the Commissioner.¹⁸

The interstate migrant construction workers in Kerala face many difficulties in getting the benefits. The migrant workers are not familiar with the language and administrative procedures of Kerala. It is not easy for a migrant worker to contest his claim before the authority especially in the case of death of the worker.¹⁹ The widow or dependents who are living in a far

¹⁵ The Employees Compensation Act (1923) is the first social security legislation in India. See V.KRISHNA MOORTHY & P.P.NAIR, THE WELFARE FUND FOR CONSTRUCTION WORKERS IN TAMIL NADU, ESS PAPER, No.18, 1 (2003).

¹⁶ See S.R. SAMANT, INDUSTRIAL JURISPRUDENCE, A TREATISE ON THE THEORY AND PRACTICE OF INDUSTRIAL LAW WITH SPECIAL REFERENCE TO INDIA 79-80 (1961).

¹⁷ See AVTAR SINGH, INTRODUCTION TO LABOUR AND INDUSTRIAL LAWS 453 (2002).

¹⁸ § 4 (4) of the Employees Compensation Act (1923) .

¹⁹ See Laxmidhar Misra, *Migration, Factors, Policies and Programmes*, in MIGRANT LABOUR AND RELATED ISSUES 326-327 (Vidyut Joshi ed., 1987).

away State will find it difficult to appear before the Commissioner for enquiry. The factors like long distance, illiteracy, language barrier and extreme poverty will prevent them from proceeding further. They simply file a petition before the authority in their State.

7.1.3. Sickness benefits and interstate migrant construction workers

The employer has the moral responsibility to give financial assistance when the worker is unable to earn income due to his sickness. Absence of occupational safety mechanism deteriorates the health of migrants. The migrant construction workers are also the victims and carriers of many epidemics. They get infected from the host States or in the course of their journey. They are more vulnerable to sexually transmitted diseases.²⁰ Work related stress, the overcrowded living conditions, lack of fresh water, lack of personal hygiene, poor environment etc aggravate the health risks of migrant construction workers.²¹

7.1.3.1. Employees Compensation Act (1923)

Employees Compensation Act (1923) imposes statutory liability on occupational diseases. The employer is liable to pay compensation if the employee contracts any occupational diseases recognized under the schedule to the Employees Compensation Act (1923)²². Schedule III provides the list of occupational diseases in relation to different employments. Contracting of any

²⁰ IOM, World Migration Report, World Migration, Cost and Benefits of International Migration 333(2005).

²¹ See Priyanka & Priyanka Mathur, *Critical Analysis of Health Challenges to Migrants; Special Reference to India*, in HUMAN MIGRATION IN THE INDIAN SUB CONTINENT, COMPLEXITIES, CHALLENGES AND IMPLICATIONS 391 (Vinod. K. Bharadwaj & Nisha Yadav ed., 2013).

²² § 3(2) of the Employees Compensation Act (1923).

of the diseases specified in Schedule III is deemed to be personal injury caused by the accident that has arisen out of and in the course of the employment.²³

Migrant construction workers are more prone to occupational diseases and epidemics due to the unhygienic living conditions and the lack of safety mechanism at workplace. They cannot avail the public health services because of their temporary status. When children are brought to workplace they are also exposed to work hazards and suffer ill health.

7.1.4. Income security and interstate migrant construction workers

The adequacy and regularity of wages is an essential determinant of income security of interstate migrant construction workers. The National Commission for Enterprises in the Unorganised Sector observes that

“Employers prefer migrant workers because they are cheaper than local workers. They are not paid regularly. The migrants from backward region are willing to accept any distress wage as long as they have access to employment.”²⁴

Unemployment compels the poor workers to accept starvation wages.²⁵

Payment of Wages Act (1936), The Minimum Wages Act (1948) and Contract Labour (Regulation and Abolition) Act (1970) regulate the payment of wages.

7.1.4.1. Payment of Wages Act (1936)

In the golden days of laissez faire, the employer and the supply and demand dynamics of market determined the wages of the worker. The State interference started after the adoption of ILO’s Minimum Wage Convention (

²³ § 4 and Schedule IV of the Employees Compensation Act (1923) explain the principles that are relevant for fixing the compensation.

²⁴ See NCEUS, Paragraphs 6.20 and 6.21 of the Report on Conditions of Work and Promotion of Livelihoods in the Unorganized Sector 97-98 (2007).

²⁵ See *supra* note 9 at 118.

1928).²⁶ The Payment of Wages Act (1936) regulates the payment of wages and prevent unauthorized deductions from wages.²⁷ Section 2 (vi) of the Act explains the concept of wage. According to section 3, every employer has the responsibility for the payment of wages to workers. By section 4, he has the duty to fix wage period, which shall not exceed one month. Section 7 of the Act lists out the permissible deductions from wages.

The Payment of Wages Act is relevant for interstate migrant construction workers because it ensure timely payment of wages and prevents unauthorized deductions. The migrant workers have to pay huge commission to the contractors. The contractors deduct the commission from the wages and pay the balance only. It is an unauthorised deduction. Likewise the provisions relating to wage periods are not observed for interstate migrants. Usually the contractors make the full payment of wages only on completion of their work and not on daily basis. It restrict the mobility of the migrant workers. The workers fear to leave the jobs otherwise they will lose the arrears.

7.1.4.2. The Minimum Wages Act (1948)

Section 13 of the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act (1979) states that the migrant workers shall not be paid less than the minimum wages. The Minimum Wages Act (1948) empowers the Government to fix minimum rate of wages for the

²⁶ See E.M.RAO, INDUSTRIAL JURISPRUDENCE, A CRITICAL COMMENTARY 106-107 (2015).

²⁷ See Ashis Das & Dhananjay Pandey, *Contract Workers in India ; Emerging Economic and Social Issues*, 40 IJIR, No.2, 242, 249 (Oct.2004).

employments specified in the schedule of the Act.²⁸ Section 3 empowers the Government to fix minimum rate of wages, to review the minimum rate and revise it at intervals not exceeding 5 years.²⁹ Section 4 provides for the principles to be followed in fixing the minimum wages.³⁰ The factors like basic rate of wages, cost of living allowance and the cash value of concessions in respect of supplies of essential commodities shall be considered in fixing minimum rate of wages.³¹

However the right to minimum wage was not realized for the interstate migrant construction workers even after the enactment of Minimum Wages Act (1948). The employers adopt various measures like putting out system and subcontracting to avoid the provisions of the statutory minimum wage

²⁸ Central Government has framed the Rules in the year 1950 and the Kerala Government framed Rules in the year 1958.

²⁹ The Second National Commission on Labour opined that "Minimum wages shall be prescribed for all employment and recommends the abolition of the present system of notifying scheduled employments and of fixing/revising the minimum rates of wages periodically for each scheduled employment." *See* Paragraph 6.114 of the Report of the Second National Commission on Labour (2002).

³⁰ § 4 of Minimum Wages Act (1948). The Minimum rate of wages.

(1) Any minimum rate of wages fixed or revised by the appropriate Government in respect of scheduled employments under § 3 may consist of (i) a basic rate of wages and a special allowance at a rate to be adjusted, at such intervals and in such manner as the appropriate Government may direct, to accord as nearly as practicable with the variation in the cost of living index number applicable to such workers (hereinafter referred to as the "cost of living allowance"); or

(ii) a basic rate of wages with or without the cost of living allowance, and the cash value of the concessions in respect of supplies of essential commodities at concessional rates, where so authorized; or

(iii) an all inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions, if any.

³¹ Rule 20 (Kerala) prescribes the mode of computation of cash value of wages. The average retail prices at the nearest market for the period of three months immediately preceding the month for which wages are to be computed, shall be taken in to account in computing the cash value of wages paid in kind and concession in respect of essential commodities supplied at concessional rates.

legislations for unorganized workers.³² The Government can raise the standard of living of the poor workers through the payment of minimum wage.³³ Payment of lower wages in the home State and the resultant poverty are the major causes of labour migration. So Kerala has the moral and legal duty to ensure fair wages to the migrant construction workers employed here.

7.1.4.3. Contract Labour (Regulation and Abolition) Act (1970)

The parliament has passed the Contract Labour (Regulation and Abolition) Act (1970) to regulate the contract labour.³⁴ The migrant contract worker has no direct connection with the principal employer for whom the work is done. The contractor employs and pays the migrant worker. There exist a contract only between the principal employer and the contractor.³⁵ Hence it is essential to have proper regulation of contracting of workers.

The requirement of registration and licencing of contractors are designed to control the contractors. Section 21 of the Contract Labour (Regulation and Abolition) Act (1970) and Kerala Rules 63 to 73³⁶ explain the guidelines for payment of wages. The contractor shall be responsible for the

³² See G.B. Nath, *Linking International Labour Standards with Trade, Implications for India*, 41 IJLE, No.4, 1005,1009 (1998).

³³ There is an argument that fixation of minimum wage will indirectly lead to unemployment as the employers will be reluctant to appoint more number of workers. If the minimum wage is high, it will increase the cost of production. See S.S.P. Sharma, H.K.Swain & Promod Kumar, *Labour Standards and Poverty in India : Emerging Issues*, 41 IJLE, No.4, 1024, 1025 (1998).

³⁴ According to § 2 (b) of the Contract Labour (Regulation and Abolition) Act (1970), “ A workman shall be deemed to be employed as contract labour, when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer. ” The Central Government framed Rules in the year 1971 and the Kerala framed Rules in the year 1974.

³⁵ See H.L. KUMAR, PRACTICAL GUIDE TO CONTRACT LABOUR REGULATION AND ABOLITION ACT & RULES 1-2 (2006).

³⁶ Rule 64 says that wage period shall not exceed 1 month. Rule 69 says that wages shall be paid in current coin, currency or both. Rule 68 says that wages shall be paid directly to the worker or the person duly authorized by him.

payment of wages in time. He shall pay wages in presence of the authorized representative of principal employer. If contractor fails, the employer has the duty to make payment of wages.³⁷

The migrant construction workers appointed by the contractors are coming under the scope of Contract Labour (Regulation and Abolition) Act (1970). It is the contractor who exploits the migrant workers more than anyone else. Contractor deducts a portion of wages as his commission. He does not keep the promises of better wages and working conditions. The factors like unfamiliarity with the language, migrant status, poverty, lack of local support etc make the migrant contract workers wholly dependent on the contractors.

7.1.5. Working hours and interstate migrant construction workers

The Minimum Wages Act (1948) contains provisions for fixation of working hours, rest, leisure and overtime wages. Fixation of reasonable working hours is an aspect of labour welfare, decent work and social security of migrant construction workers. Long hours of work is an exploitation of the health of the migrant worker.³⁸

“Work conditions of migrant workers are severely adverse with long working hours in hazardous environs. The migrant workers, in most cases, stay at the work site in temporary huts and shanties. Often the employer expects them to be available for work all 24-hours of the day.”³⁹

³⁷ The National Commission on Labour recommends that the principal employer shall be held liable for the benefits payable to contract labour, because they are the ultimate beneficiaries. The employer shall ensure the benefits to contract workers. *See* Paragraph 6.109 of the Report of the Second National Commission on Labour (2002).

³⁸ *See* NCEUS, Paragraph 6.27 of the Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector 98 (2007).

³⁹ *See* NCEUS, Paragraph 6.23 of the Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector 98 (2007).

7.1.5.1. The Minimum Wages Act (1948)

Section 13 of The Minimum Wages Act (1948) imposes a duty on the Government to fix the number of working hours for a normal working day inclusive of specified intervals, provision for a day of rest with wages in every period of seven days.⁴⁰ Rule 23 (Central) (1950) says that the worker shall be given a day of rest in every week if the worker have worked in the scheduled employment under the same employer for a continuous period of 6 days. If the worker is required to work on rest day he shall be provided with a substituted rest day on any one of the five days immediately before or after the rest day.⁴¹ Rule 24 (Central) provides that the number of hours of work which constitute a normal working day for an adult is 9 hours and a child is four and half hours. Inclusive of the intervals of rest, the working day of an adult worker shall not spread over more than twelve hours on any day.⁴² Rule 24 A (Central) provides for night shifts. A holiday for the whole day shall be provided for night shifts. Section 14 read with Central Rules 25 (1950) provides for extra wages for

⁴⁰ § 13 (2) provides for exception.

⁴¹ Rule 23 (Kerala) provides for weekly holidays. A worker shall not be required to work on the first day of week except when he get a holiday for the whole day on one of the three days immediately before or after that day. If he is required to work on that holiday, he shall be paid wages equal to his average daily wages and the weekly holiday may be substituted for another day.

⁴² According to Rule 24 (Kerala) the number of hours for a normal working day (for employment other than plantations) shall be nine hours for an adult and four and a half hours for a child. A worker shall not be made to work for more than five hours unless he gets an interval for rest of at least half an hour. The period of work of an adult worker each day shall be so fixed that inclusive of his intervals for rest, it shall not spread over more than ten and a half hours in any day.

overtime. Worker is entitled to overtime wages at double the ordinary rate of wages.⁴³

The provisions of the Minimum Wages Act (1948) are not effectively implemented for migrant workers.⁴⁴ The employers and contractors prefer migrant workers because their services are continuously available to the contractor.⁴⁵ They are expected to work at any time. The interstate migrant workers in Kerala are often exploited in respect of working hours, wages, holidays and overtime wages.

7.1.6. Amenities at workplace and interstate migrant construction workers

The workplace amenities protect the health and vigour of workers. Protection of health is an aspect of social security of a worker. The statutory facilities consists of the provisions for fresh water, canteen, rest rooms, washing facilities, latrines and urinals. The Contract Labour (Regulation and Abolition) Act (1970) lays down certain amenities for migrant contract workers.

7.1.6.1 The Contract Labour (Regulation and Abolition) Act (1970)

The interstate migrant construction workers are eligible for the workplace amenities provided under the Contract Labour (Regulation and Abolition) Act (1970). Section 17 of the Act provides for rest rooms which

⁴³ Rules 27 and 28 (Kerala) provides for overtime work and wages. According to Rule 27, the total number of hours of overtime shall not exceed fifty for any quarter. Rule 28 says that a worker is entitled to overtime wages if he works for forty eight hours in any week.

⁴⁴ See ARJUN PATEL & KIRAN DESAI, RURAL MIGRANT LABOUR AND LABOUR LAWS, WORK AND DEVELOPMENT ; ESSAYS IN HONOUR OF P.G.KRISHNAN 62, 73 (1995).

⁴⁵ See 4 Y. G Joshi & Deepak Verma, *Human Rights Violation and Enforcement of Law vis-a-vis Conflicting Interest Groups, A case of Labour Migration from Chhattisgarh*, in HUMAN RIGHTS AND POVERTY IN INDIA ,THEORETICAL ISSUES AND EMPIRICAL EVIDENCES 9 (S.N.Chowdhary ed.,2005).

are sufficiently lighted, ventilated and are kept in a clean and comfortable condition.⁴⁶ According to section 18 every contractor has the duty to maintain and provide wholesome water and washing facilities⁴⁷, sufficient number of latrines and urinals.⁴⁸ Section 19 says that the contractor shall provide first aid box which is readily accessible during the working hours.⁴⁹ According to section 16 of Act if the number of contract labour is one hundred or more the canteens should be provided.⁵⁰

Majority of the migrant workers are appointed on contract basis. The system of contracting has merits and demerits. Employment of contract

⁴⁶ Rules 41 (Kerala) says that where contract labour is required to halt at night and employment is likely to continue for more than 3 months, contractor or principal employer shall provide rest rooms within 15 days. Separate rooms are to be given for females. There should be sufficient supply of lighting, water, fresh air and protection against heat, wind, rain. There shall be smooth, hard and impervious floor surface.

⁴⁷ Rule 57 (Kerala) provides that separate and adequate washing facilities shall be provided for men and women in hygienic condition.

⁴⁸ Rule 51 (Kerala) says that there shall be at least one latrine for every 25 workers. Rule 52 (Kerala) says that latrines shall secure privacy with proper door and fastening. According to Rules 53 and 55 (Kerala) there shall be separate urinals and latrines for male and female workers. Rule 56 (Kerala) says that urinals and latrines shall be kept clean and hygienic.

⁴⁹ Rules 58 (Kerala) says that there shall be first aid boxes in charge of a person who shall be available during working hours. The contents of first aid boxes are also listed. If there are more than 150 contract workers, a trained person should be appointed.

⁵⁰ Rule 42 (Central) provides that if the work is likely to continue for more than six months and number of employees exceed one hundred or more, the contractor has the duty to provide canteen. Rule 43 (Central) says that canteen shall consist of at least a dining hall, kitchen, store room, pantry and washing place separately for workers and for utensils. The canteens shall be sufficiently lighted and be maintained in clean and sanitary condition. Suitable arrangements shall be made for collection and disposal of garbage and waste water. Rule 44 (Kerala and Central) speaks about dining hall. The dining hall shall accommodate at a time at least 30% of contract workers working at a time. A portion of dining hall, washing place and service counter shall be partitioned off and reserved for women. Sufficient tables, stools, chairs or benches shall be available for the diners. Rule 45 (Kerala and Central) provides that there shall be sufficient utensils, crockery, cutlery & furniture and other equipments necessary for the efficient running of the canteen. Rule 46 (Kerala and Central) says that the food stuffs served in the canteen shall be in accordance with the normal habits of contract workers. Rule 47 (Kerala and Central) says that charges of food stuffs shall be conspicuously displayed. *See also* Rule 48 (Kerala).

workers reduce the cost of production.⁵¹ It enables the employers to get skilled workers at a comparatively lower rate. But the workers face some disadvantages. Subcontracting aggravates the harassment on migrants. The responsibility is further diluted. There is no direct nexus between the workers and principal employer. The welfare provisions are often violated for migrant workers. The *Asiad case*⁵² is the living example where large number of interstate migrant contract workers were treated badly by the contractors and employers. The migrant construction worker has no bargaining power. He cannot resist the exploitation practiced on him by the employer or contractor.

7.1.7. Freedom of employment and interstate migrant construction workers

Freedom of employment is a parameter of social security and decent work. A worker shall not be compelled to do a particular job. He shall have the freedom to select his occupation and demand adequate remuneration. The system of bonded labour prevents the worker from exercising his legitimate rights.⁵³ Bonded Labour System Abolition Act (1976) protects the migrant construction workers from the evil practice of bonded labour.

7.1.7. 1 Bonded Labour System Abolition Act (1976)

Bonded labour system is a kind of forced labour or partly forced labour.

The debtor namely the worker or the surety of the worker had entered in to an

⁵¹ See *supra* note 26 at 246. The employers can flout many statutory provisions that are applicable for permanent workers.

⁵² *AIR 1982 SC 1473(India)*.

⁵³ See *V. PARABRAHMA SASTRI, RIGHT TO LIFE AND PERSONAL LIBERTY (COMMENTARY AND CASE MATERIALS) 59 (2010)*. The bonded labourers are always the victims of virtual imprisonment and surveillance of the powerful men who constantly retain them under their unlawful control.

agreement with the creditor namely the employer or contractor to render his services or the services of any member of his family to pay off the advance he received or to fulfill a custom or social obligation or to discharge the duties imposed on him by reason of his birth in any particular caste or community.⁵⁴ Section 4 of the Act abolishes the system of bonded labour. All the bonded labourers are declared to be free from any obligation to render bonded labour. A person cannot make any advance or compel any person to render bonded labour or any other kind of forced labour. Section 5 declares that all agreements, custom or contract that require any person to render bonded labour is null and void.

The bonded worker forfeits the freedom of employment. He agrees to work for no wages or for nominal wages. One of the reasons for enacting the ISMW Act (1979) is the inadequacy of Bonded Labour System Abolition Act (1976).⁵⁵ Section 2 (g) of the Act makes a special reference to interstate migrant workers while defining bonded workers. During distress, the migrant construction worker borrows money from employer or contractor. He has to pay back the money with interest from the wages he earned. Sometimes the wages are not enough to discharge the debt. The debt continues. The interstate migration in subhuman conditions is equal to bonded labour.

⁵⁴ § 2(g) of the Bonded Labour System Abolition Act (1976) defines bonded labour system. *See also* Y.R. HARAGOPAL REDDY, BONDED LABOUR SYSTEM IN INDIA, CAUSES, PRACTICE, THE LAW 34 -35 (1995).

⁵⁵ *See* the statement of objects and reasons for ISMW Act (1979).

7.1.8. Gender equality and interstate migrant construction workers

The women construction workers shall get protection from discrimination in working conditions. Equal pay for equal work is an aspect of gender equality. Gender justice is a component of social security, human dignity and decent work. The Equal Remuneration Act (1976) provides for equality of treatment in payment of wages.

7.1.8.1. The Equal Remuneration Act (1976)

The Equal Remuneration Act (1976) guarantees equal remuneration to men and women workers and prevent discrimination on the ground of sex. The Act was passed to give effect to the Constitutional obligation contained in article 39 of the Constitution . State shall direct its policy towards securing equal pay for equal work for both male and female workers.⁵⁶ Construction and activities there with are specified in schedule of the Act.

Section 4 of the Act casts a duty on the employer to pay equal remuneration for men and women workers for same work or work of a similar nature.⁵⁷ Section 5 states that the employer shall not make any discrimination while recruiting men and women workers for same work or work of a similar

⁵⁶ See the statement of objects and reasons of The Equal Remuneration Act (1976) Act. To give effect to art.39 of Constitution the President promulgated the Equal Remuneration Ordinance (1975). (International women's year).

⁵⁷ § 2(h) of The Equal Remuneration Act (1976)

Same work or work of a similar nature means work in respect of which the skill, effort and responsibility required are the same, when performed under similar working conditions, by a man or a woman and the differences, if any, between the skill, effort and responsibility required of a man and those required of a woman are not of practical importance in relation to the terms and conditions of employment.

nature. There shall not be any discrimination on matters like promotion, training or transfer.⁵⁸

In theory the Act is very comprehensive. But terms like “Same work or work of a similar nature” can be interpreted widely so that the provisions can be easily manipulated.⁵⁹ The National Commission for Enterprises in the Unorganised Sector observes that,

Migrant women suffer from difficulties of gaining employment compared to migrant men. Even when they are hired, the terms and conditions are more adverse and wages paid lower than for men and local female wage workers. Very often the norms of the Minimum Wages Act (1948) are not followed. They are paid in piece rates and are hence preferred by employers as it helps them in cost cutting. There is no fixity of working hours. They are made to work for long hours without overtime wages. They are unaware of the prevailing wage rates and accept work at lower wages. Most women remain manual, load

⁵⁸ § 5 of The Equal Remuneration Act (1976)

On and from the commencement of this Act, no employer shall while making recruitment for the same work or work of a similar nature [or any condition of service subsequent to recruitment, such as, promotions, training or transfer,] make any discrimination against women except where the employment of women in such work is prohibited or restricted by or under any law for the time being in force : Provided that the provisions of this section shall not affect any priority or reservation for scheduled castes or scheduled tribes, ex-servicemen, retrenched employees or any other class or category of persons in the matter of recruitment to the posts in an establishment or employment.

⁵⁹ See Odeyar. D. Heggade, *International Labour Standards and India, The Case of Women Labour*, 41 IJLE, No.4, 1035, 1038 (1998).

carrying and unskilled workers. Wages are not paid in time and are more like a subsistence allowance.⁶⁰

The Act is not implemented properly even among resident workers in the unorganized sector. The migrant construction women workers in Kerala face discrimination in wage rates, working conditions and social security rights.

7.2. DRAFT LABOUR CODE ON SOCIAL SECURITY (2018)

The multiplicity of laws and forums to provide social security has been cited as a major drawback by the Second National Labour Commission . There are a number of Welfare Boards and authorities for administering various benefits through different laws. The procedures for availing benefits and the redressal machineries are also different. The Ministry of Labour and Employment has proposed a Draft Labour Code on Social Security (2018) to rationalize the existing social security legislations. According to the statement of objects and reasons, the objective of this Code is to provide a legislative and an administrative structure for a right based, universal basic social security to the entire workforce in the Country. The Code envisages universal social security including pension, sickness benefit, maternity benefit, disablement benefit, invalidity benefit, dependent's benefit, medical benefit, group insurance benefit, provident fund, unemployment benefit and international worker's pension benefit. The benefit extend to all kinds of employment including part-time workers, casual workers, fixed term workers, piece rate based workers, domestic workers, own account workers etc. So it can be

⁶⁰ See NCEUS, Paragraph 6.30 of the Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector 99 (2007).

presumed that the benefit extends to interstate migrant construction workers also.

The code has been prepared with the proposal to merge the existing fifteen legislations namely The Unorganized Workers Social Security Act (2008), The Employees Compensation Act (1923), The Employees State Insurance Act (1948), The Employees Provident Funds and Miscellaneous Provisions Act (1952), The Maternity Benefit Act (1961), The Payment of Gratuity Act (1972), The Unorganized Mines Labour Welfare Fund Act (1946), The Limestone and Dolomite Mines Labour Welfare Fund Act (1972), The Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare (Cess) Act (1976), The Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Fund Act (1976), The Beedi Workers Welfare Cess Act (1976), The Beedi Workers Welfare Fund Act (1976), The Cine Workers Welfare (Cess) Act (1981), The Cine Workers Welfare Fund Act (1981) and The Building and Other Construction Workers Cess Act (1996).

The State Boards, in coordination with the Central Board shall provide a unique aadhar based registration service for registration of workers and provide a portable social security account “Vishwakarma Karmik Suraksha Khata” (VIKAS) which shall be linked to aadhar number of the workers. The registered workers shall be classified to different categories based on their socio economic status, occupation, nature of employment and citizenship. The authority would use parameters like income, source of income of the household, social profile, demographic profile, immovable property, movable

property, land holding, nature of land holding, nature of dwelling, occupation, nature of employment, nature of disabilities or adversities of the bread winner etc. The amount of contribution to the welfare schemes depends on the category of the workers.⁶¹

The most significant advantage of the proposed Labour Code is the provision for portability of social security benefits. There is universal coverage. It is believed that a single code on social security will result administrative convenience and efficiency of the system. The Code does not make any express reference to migrant workers. But they are included in the unorganized workers by general implication. The identification of beneficiaries is an important task for the authorities. The interstate migrant workers can be registered in the scheme. The portability of the benefits is important for migrants than any other workers.

7.3. CONCLUSION

The existing statutory measures for the protection of social security and labour welfare of interstate migrant construction workers under various welfare legislations are described below for an easy reference.

Table No : 7.1

RIGHTS CONFERRED	RELEVANT STATUTES
Old age benefit	Nil
Unemployment Benefit	Nil
Maternity Benefit	Nil
Family Benefit	Nil
Medical Benefit	Nil

⁶¹ See part C of the Draft Code on Social Security (2018).

Survivors benefit	Employees Compensation Act (1923)
Sickness Benefit	Employees Compensation Act(1923)
Employment Injury Benefit	Employees Compensation Act(1923)
Work Place Amenities	Contract Labour (Regulation and Abolition)Act (1970)
Minimum Wages	The Minimum Wages Act (1948)
Protection from Unauthorised Deductions	The Payment of Wages Act (1936)
Equal Pay for Equal Work	Equal Remuneration Act (1976)
Freedom of Employment	Bonded Labour System Abolition Act (1976)

The right to social security of migrant construction workers envisages the right to minimum security of income on unexpected contingencies. There shall be access to basic services and essential commodities at a reasonable rate. There are some provisions in the Employees Compensation Act (1923) that provide for employment injury benefit, sickness benefits and survivors benefit. Large number of migrant workers suffer death or injury during the course of their employment. But the poor worker or their survivors are unable to conduct the proceedings under the Act due to their migrant status, illiteracy and poverty. It is not easy for the claimants to travel long distance to Kerala to proceed with their claim. There is no positive attitude on the part of the employer and the contractors to help the migrant construction workers to access the benefits under the Act.

Large number of migrant construction workers are contract labourers. The Contract Labour (Regulation and Abolition) Act (1970) imposes certain duties on the contractor to ensure the welfare of workers. But the provisions like registration and licensing of contractors are not properly followed. The

system of contract labour is suitable in modern time to reduce the cost of production and to improve efficiency. But uncontrolled contracting and sub contracting will lead to the abuse of rights of workers. When resident workers are not ready to work under bad conditions, the contractors rely on migrant workers. In order to reduce the cost of production the labour component is often manipulated. The contractors seldom observe the provisions for amenity of workers like supply of fresh water, good accommodation, adequate washing facility, proper sanitation etc. The State as well as the private employers is negligent in installing the safety measures in workplace to protect the migrant construction workers from accidents and occupational diseases. They do not get essential amenities at construction site.

The Act has no provisions for the social security of migrant contract workers.

Fair wages are essential for a migrant construction worker to achieve economic security. The Payment of Wages Act (1936) provides for timely payment of wages and prohibits unauthorized deductions. The contractors deduct the commission from the wages and pay the balance only. The Act provides for fixation of wage period. The migrant construction workers are paid wages only on completion of their work irrespective of the wage period. The Minimum Wages Act (1948) fixes minimum wages for employment. The Act imposes legal obligation for fixation of working hours, rest, over time wages and so on. The provisions are often disregarded by employers. The migrant construction workers are compelled to work for fewer wages due to

their vulnerability. The provisions for rest, leisure and overtime wages are not implemented properly. There is no economic security for migrant construction workers.

Bonded Labour System Abolition Act (1976) identifies migrant workers as one of the category susceptible to bonded labour. Bonded labour is a category of forced labour. The Act is significant for migrant construction workers because debt bondage is one of the reason for interstate labour migration to Kerala.

Equal Remuneration Act (1976) ensures equal pay for equal work without the discrimination of sex. Due to the vague interpretation of the terms of the Act, the benefit is not available even for the resident women construction workers. The migrant women construction workers do not receive equal pay as envisaged in the Act. The labour laws do not address the gender specific insecurities faced by migrant women workers in the construction sector.

The Payment of Bonus Act (1965) , The Employees Provident Fund and other Miscellaneous Provisions Act (1952) ,Maternity Benefit Act (1961) ,The Employees State Insurance Act (1948) and Payment of gratuity Act (1972) protect the workers of organised sector only. The migrant workers do not get the benefits of the above referred legislations due to their migrant nature, informal labour and lack of permanent employer-employee relationships. It can be seen that there are no effective legal provisions for social security of migrant construction workers in the existing legislations.

CHAPTER VIII

OTHER LEGAL MEASURES FOR THE PROTECTION OF

INTERSTATE MIGRANTS IN KERALA

It is not possible to define social security in a strict jacket. The content of social protection is dynamic and depends on the social and economic system that prevails in a country. Social security includes social assistance, social insurance and social service. In social assistance the beneficiary does not directly contribute but he gets the benefit. Social insurance is contributory in character the fund is pooled by employer, employee and State. Social services are administered by the State and it is non contributory in character.¹ There are certain administrative measures to ensure the social protection of migrant workers. Central Government and the Government of Kerala have framed some schemes for realizing the social security of migrant workers.

The migrant workers are included within the ambit of Unorganised Workers Social Security Act (2008). So the schemes covered under the Act are available for the migrant workers also. The Government appointed a Working Group to understand the measures to be taken to facilitate migration.

¹ See K.PRATAP, RURAL LABOUR IN INDIA, PROBLEMS AND WELFARE SCHEMES 114-115 (1992).

The Working Group on Migration, Ministry of Housing and Urban Poverty Alleviation, has submitted its report in January 2017.² The State of Kerala has made some studies on the conditions of domestic migrant labour³ and introduced some welfare schemes. The Draft Kerala Labour Policy (2017) makes special reference to the welfare of migrant workforce.⁴ This chapter makes an attempt to analyse the non statutory measures that are available for social security of interstate migrant construction workers.

8.1. SOCIAL SECURITY BOARDS AND INTERSTATE MIGRANT CONSTRUCTION WORKERS

Section 5 of the Unorganised Workers Social Security Act (2008) Act requires that Central Government shall constitute National Social Security Board and section 6 mandates that the State Governments shall constitute State

² The report analyses the laws and schemes at the Central and State levels to ensure that there are no barriers to free voluntary movement of people across the country, no restrictions on them to be fully able to take advantage of the opportunities, wherever they may be available in India. *See* Ministry of Housing and Urban Poverty Alleviation, Paragraph 4 of the Report of the Working Group on Migration (2017).

³ The Labour Department of the Government of Kerala, led by the then Hon'ble Minister for Labour and Rehabilitation Mr. Shibu Baby John has decided to make a study on the domestic migrant labour to formulate appropriate welfare measures and to provide them a minimum social security floor. The study was entrusted to Gulati Institute of Finance and Taxation (GIFT). The major focus of the study was to determine broadly the numbers of domestic migrant labour in Kerala and to understand their socio-economic profile. *See generally* M. P. JOSEPH, D.NARAYANA & C.S. VENKATESWARAN, DOMESTIC MIGRANT LABOUR IN KERALA (2013).

⁴ It states that labour inspection shall be made more effective and compulsory. State shall take steps to implement the provisions relating to conditions of services, wages and benefits for the workers. Identity cards shall be issued to all interstate migrant workers. Only registered workers shall be permitted to be employed in the State. The welfare schemes shall be made more liberal so as to cover more workers. The workers shall be provided with the benefits of comprehensive insurance scheme (Dec. 24, 2017), <https://kerala.gov.in/policies>.

Social Security Boards.⁵ The Unorganised Workers Social Security Act (2008) is a bold step of the parliament to address the social security of unorganized workers.⁶

8.1.1. The Unorganized Workers Social Security Act (2008)

The Unorganized Workers Social Security Act (2008) is enacted for the protection of unorganized workers. The unorganized sector means

“An enterprise owned by individuals or self employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers the number of workers is less than 10”.⁷

“The unorganized worker⁸ means a home based worker,⁹ self employed worker¹⁰ or a wage worker¹¹ in the unorganized sector and includes a worker in the organized sector who is not covered by social security legislations referred under the Act.¹²”.

⁵The Social Security Boards have the duty to recommend suitable schemes for different sections of unorganized workers, to advise the Government on such matters arising out of the implementation of this Act, to monitor social welfare schemes of Government and to review the progress of registration, issue of identity card, record keeping functions, expenditure from funds under various schemes etc. *See* § 5 & § 6 of the Act.

⁶ *See* Paragraph 7.18 of the Report of the National Commission on Labour (2002). One of the main tasks entrusted to the Commission was to propose a legislation guaranteeing the minimum protection and welfare of unorganized sector workers. The Commission listed the characteristics of unorganized sector as low level of organization, casual labour relations, small own account or family owned enterprises, or micro enterprises, ownership of fixed and other assets by self, involvement of family members, easy entry and exit, free mobility, use of indigenous resources and technology, absence of fixed working hours, unregulated and unprotected nature of work, lack of employment security and social security, use of labour intensive technology, lack of support from the government etc. *See also* India Labour & Employment Report 149 (2014).

⁷ § 2 (l) of the Act.

⁸ § 2 (m) of the Act. *See also* Paragraph 7.25 of the Report of the Second National Commission on Labour (2002).

⁹ § 2(b) of the Act.

¹⁰ § 2(k) of the Act.

¹¹ § 2(n) of the Act.

¹² § 2(m) of the Act. The legislations are, Workmen Compensation Act (1923), The Industrial Disputes Act (1947), The Employees State Insurance Act (1948), The Employees Provident Fund and Miscellaneous Provisions Act (1952), The Maternity Benefit Act (1961) and the Payment of Gratuity Act (1972).

The migrant worker is included in the definition of wage worker.¹³

Section 3 of the Act provides that the Central Government shall formulate welfare schemes for the unorganized workers in matters relating to life and disability cover, health and maternity benefits, old age protection etc. The schedule I of the Act contains certain welfare schemes of the Central Government for the unorganized workers who are below the poverty line.¹⁴ They provide for insurance coverage on death, total and partial disability, infrastructure development, training programmes, educational assistance to children, maternal benefits and so on.¹⁵

While the Act directs the Central Government to frame welfare schemes, it gives an option to the State Government to frame schemes for unorganized workers in matters relating to provident fund, employment injury benefits, housing, educational schemes for children, skill up gradation of workers, funeral assistance and old age homes.¹⁶

¹³ As per § 2(n) of the Act,

A wage worker is one who is employed for remuneration in the unorganized sector, directly by an employer or through a contractor, irrespective of place of work, whether exclusively for one employer, or for one or more employers, whether in cash or in kind, whether as a home based worker, or as a temporary or casual worker, or as a migrant worker, or workers employed by households including domestic workers, with a monthly wage of an amount that may be notified by the government.

¹⁴ The benefits shall be need based and not income based. *See S. Srinivasan, Unorganised Workers Social Security Act (2008), A Critique* 1 LLJ 3,5 (2012).

¹⁵ The schemes mentioned in Schedule I of the Act are Indira Gandhi National Old Age Pension Scheme, National Family Benefit Scheme, Janani Suraksha Yojana, Handloom Weavers Comprehensive Welfare Scheme, Pension to Master Craft Persons, Handicraft Artisan Comprehensive Welfare Scheme, National Scheme for Welfare of Fishermen and Training and Extension, Janasree Bima Yojana, Aam Admi Bima Yojana and Rashtriya Swasthya Bima Yojana.

¹⁶ Kerala has established certain welfare funds for informal workers such as agricultural labourers, toddy tappers, coir workers, construction workers and so on. *See India Labour & Employment Report* 48 (2014). *See also* Paragraph 7.361 of Report of the Second National Commission on Labour (2002).

The Act does not lay down any condition for claiming social security benefits other than registration. If the scheme requires a contribution from the worker, he has to remit the contribution. Every unorganized worker above the age of fourteen years who makes a declaration that he is an unorganized worker is eligible for registration. The registered worker shall get an identity card carrying a unique identification number.¹⁷ Section 9 of the Act provides for the setting up of Workers Facilitation Centres at the State level.¹⁸

The Act does not provide a remedy for malpractices like non-payment of wages, payment of lesser wages, delay in payment, unequal wages, discrimination at workplace, etc.¹⁹ The benefits are limited to those who are below the poverty line. Such classification is not justified always.²⁰ Further the schemes are not comprehensive. It does not contain provisions for women, children, unemployment benefits and medical benefits. It is not appropriate to treat unorganized workers as a homogenous group. The welfare schemes shall take care of the different needs of the workers. There are no reference to the development of livelihood strategies and infrastructure of the migrant's home place.²¹ The major lacuna of the legislation is that it does not confer any

¹⁷ § 10 of the Act.

¹⁸ The functions of Workers Facilitation Centres are to disseminate the information on available social security schemes for unorganized workers, to facilitate the filing, processing and forwarding of application forms for registration of unorganized workers, to assist unorganized workers to obtain registration from the district administration and to facilitate the enrollment of registered unorganized workers in social security schemes.

¹⁹ See Paromita Goswami, *A Critique of the Unorganized Workers Social Security Act*, XLIV EPW, No.11, 17, 18 (Mar. 14, 2009).

²⁰ See India Labour & Employment Report 152 (2014). "The process of identification of BPL households is deeply flawed, large number of vulnerable workers and their families in the unorganized sector who live precariously just above the poverty line are excluded."

²¹ See V.M. Rao, D. Ramasekhar & J.Y. Suchitra, *Unorganised Workers Deprivation, Social Security Needs, Policy Implications*, 41 EPW, No.19, 1913, 1919 (May 13-19, 2006).

justiciable right to migrant workers. It does not define the right to social security. The formulation of the schemes depends on the sweet will of the Governments. It do not provide for time bound action for the formulation of schemes.

8.2. WELFARE SCHEMES FOR INTERSTATE MIGRANT CONSTRUCTION WORKERS BY THE CENTRAL GOVERNMENT

Central Government has formulated certain welfare schemes for the unorganized workers which are applicable to migrant workers . About more than half of the total workforce in India is unorganized.²² The unorganized workers do not receive adequate social security benefits from the State.²³ The informal workers like migrant construction workers shall be brought in to the main strata of the society because they are the backbone of our economy.

8.2.1.Indira Gandhi National Old Age Pension Scheme.

The Indira Gandhi National Old Age Pension Scheme is a non-contributory old age pension scheme. It covers all individuals who are above the age of 59 and live below the poverty line. It was launched by Ministry of Rural Development in August 1995 and it is a part of National Social Assistance Programme that was launched by the Ministry of Rural Development in August 1995. The beneficiaries of the age group 60-79 receive

²² See NCEUS, Paragraph 2.7.4 of the Definitional and Statistical Issues, Task Force Report (2007). “Un-organized workers consist of those working in the un-organized sector or households, excluding regular workers with social security benefits provided by the employers and the workers in the formal sector without any employment and social security benefits provided by the employers.” See also NCEUS, Paragraph 1.27 of the of the Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector 5 (2007).

²³ See Ravi Duggal, *Need to Universalize Social Security* , 41 EPW, No.32, 3495,3496(Aug. 12-18, 2006).

a monthly pension of Rs.200. Those who are 80 years and above receive a monthly pension of Rs.500²⁴.

8.2.2. Janani Suraksha Yojna

It is a safe motherhood project under the National Rural Health Mission. It was launched in April 2005 by modifying the National Maternity Benefit Scheme. The major objective is to reduce the maternal and neonatal mortality by promoting institutional delivery among poor pregnant woman.²⁵ Financial assistance of Rs.500/- is granted for two deliveries to pregnant woman who attained 19 years of age and belong to BPL families.²⁶

8.2.3. Aam Admi Bima Yojna (AABY)

It is a merged scheme of Aam Admi Bima Yojna and Janashree Bima Yojna,²⁷ that has come in to effect on 01.01.2013. The member should be aged between 18 years and 59 years. It provides for insurance to the head of family of rural landless households against natural death as well as accidental death and partial or permanent disability. It provides for a scholarship benefit for

²⁴(Apr.7,2015),<http://nsap.nic.in/guidelines.html>.

See also (Apr.5, 2015) , <http://india.gov.in/govt/viewscheme.php?schemeid=1835>. See also R.K.A. Subrahmania, *Social Protection of the Workers in the Unorganized Sector*, 48 IJIR SPECIAL ISSUE ON UNORGANISED WORKERS, No.3, 460 , 462 (Jan. 2013).

²⁵ See generally, Sanjeev. K .Gupta, Dinesh K. Pal, Rajesh Tiwary, Rajesh Garg, Ashish.K. Shrivastava, Radha Sarawagi, Rajkumar Patel, Lokesh Agarwal, Prashanth Gupta & Chandrakant Laharya : *Impact of Janani Suraksha Yojana on Institutional Delivery Rate and Maternal Morbidity and Mortality, An Observational Study in India*, 30 JOURNAL OF HEALTH, POPULATION AND NUTRITION, No.4, 464-471. (Dec. 2012). A study was conducted in the hospitals in the state of Madhya Pradesh to know the effectiveness of the scheme, Janany Suraksha Yojana. It was found that the number of institutional deliveries has increased after the implementation of the scheme.

²⁶ (Mar. 13, 2015), <http://nrhm.gov.in/nrhm-components/rmnch-a/maternal-health/janani-suraksha-yojana>.

²⁷ Janashree Bima Yojna was introduced in 2000. It targeted the urban and rural poor living below the poverty line or on the BPL margin. The premium is paid equally by the State and Central Government. See India Labour & Employment Report 147(2014).

children of the members of AABY to the tune of Rs.100 per month for children studying in standards 9th to 12th. The premium of Rs.200 is equally shared by Centre and State Governments. There is a coverage of Rs.30000 in case of natural death, Rs.75000 in case of death due to accident or fatal permanent disability and Rs.37500 in case of partial disability.

8.2.4. Rashtriya Swasthya Bima Yojna (RSBY)

It is a smart card based health insurance system with unique portability of access to health care services. RSBY scheme was launched on 01/04/2008 by the Ministry of Labour and Employment to provide health insurance coverage for BPL families.²⁸ The beneficiaries are entitled to hospitalization coverage up to Rs.30,000/- for most of the diseases. The premium will be paid by the Central and State Governments in the ratio of 75:25. All pre existing diseases are covered with additional coverage of transportation cost of Rs.100 per visit. Now the Scheme cover building and other construction workers also.²⁹

8.2.5. National Family Benefit Scheme

On the death of the sole earning member of the family, whose age group is coming under 18 to 59 ,benefit is available under the

²⁸ See Ministry of Housing and Urban Poverty Alleviation, Paragraph 91 of the Report of the Working Group on Migration (2017). “One of the major advantages of RSBY is that the benefits are portable, i.e., a beneficiary who has been enrolled in a particular district will be able to use her smart card in any RSBY empanelled hospital across India. This renders the scheme particularly relevant for internal migrants.”

²⁹ See India Labour & Employment Report 150-151 (2014). See also *supra* note 24 R.K.A. Subrahmania at 464 . See also Ministry of Housing and Urban Poverty Alleviation ,Paragraph 67 of the Report of the Working Group on Migration (2017).

National Family Benefit Scheme . The family should come under poverty line.³⁰

The welfare schemes for unorganized workers like Indira Gandhi National Old Age Pension Scheme, National Family Benefit Scheme, Janashree Bima Yojna, Rashtriya Swasthya Bima Yojna, Aam Admi Bima Yojna and Janani Suraksha Yojna are applicable to migrant construction workers also. Majority of the schemes provide for old age benefit and health insurance which are essential for migrant construction workers. Income security depends on the availability of resources.³¹ The welfare schemes are not focusing on the development of infrastructure. The migrant workers have no access to natural resources. The benefits shall go to the needy people.³² Identification of beneficiaries is a crucial factor in the success of a welfare scheme.

8.3. WELFARE SCHEME FOR INTERSTATE MIGRANT CONSTRUCTION WORKERS BY THE STATE GOVERNMENT

The State of Kerala ranks top in providing welfare measures to unorganized workers. The State welfare funds cover almost 54 % of unorganized workers.³³ The Government of Kerala has started certain administrative measures like Kerala Migrant Workers Welfare Scheme,

³⁰ (Apr. 12, 2015), <http://nsap.nic.in/guidelines.html>.

³¹ See Nalini Nayak, *Social Security for Unorganised Workers*, 40 EPW, No.22/23, 2231, 2232-2233 (May 28-Jun. 10, 2005). The capitalists got the access to natural resources and they deprived the common men of their livelihood. It is one of the evil effects of globalization.

³² See generally V.M.Rao, D.Rajasekhar & Suchithra.J.Y, *Putting the Cart Before a Nonexistent Horse*, 41 EPW, No 32, 3488-3491(Aug.12-18,2006).

³³ See M.S.Ramanujam & K.L. Rawal, *Unorganised Workers Welfare ; Imperatives & Initiatives*, 46 IJIR, No.116, 20 (Jul. 2010).

Changathi Literary Programme, Awaz, Apna Khar etc for the welfare of interstate migrant workers.

8.3.1. Kerala Migrant Workers Welfare Scheme

The State of Kerala has taken a commendable step in the protection of interstate migrant workers through the introduction of Kerala Migrant Workers Welfare Scheme.³⁴ The scheme started on May 1, 2010. The implementation of the scheme is entrusted with the Kerala Building and other Construction Workers Welfare Fund Board.

Migrant workers have to register their names under this scheme at the offices of the Board. The workers have to remit an annual contribution of Rs.30. The Board shall remit double amount and the remaining sum will be contributed by the State.³⁵ The membership is subjected to renewal every year. It is the duty of every employer and contractor to ensure that the migrant workers under them are get registered under the welfare scheme. The benefits include survivor benefit, accident benefit, terminal benefit and the like.

8.3.1.1. Survivors benefit

Legal heirs namely spouse, children and dependent parents will get cash benefit of Rs.50, 000/- on the death of the registered worker. Application along with certified copy of death certificate and documents showing the particulars of heirs of workman shall be submitted within 3 months before the District Executive Officer.

³⁴ See G.O. (M.S)No.46/2010, Labour, Thiruvananthapuram dated March 29, 2010.

³⁵ (Nov.23,2017), <http://www.thehindu.com/todays-paper/tp-national/tp-kerala/welfare-schemes-for-migrant-workers/article160286>. The news was published on May 1, 2010.

A registered worker who met with death in Kerala shall get funeral assistance for transporting the dead body to his native place for funeral .The amount is limited to actual expenses incurred or the amount fixed in the scheme depending on distance of State or Union Territory whichever is less.

Table No : 8.1

T.N, Karnataka, Andhrapradesh, Pudussery, Karikkal, Yanam, Mahi, Goa	Rs.5,000/-
Maharashtra, M.P, Gujarat, Chattisgarh, Odisha, Du Damam, Lakshadweep	Rs.7500/-
Rajasthan, Uttar Pradesh, Punjab, Hariyana, Himachal Pradesh, Uttaranchal, Bihar, Jharkhand, West Bengal, Delhi	Rs.10,000/-
Jammu & Kashmir, Sikkim, Assam, Meghalaya, Tripura, Arunachal Pradesh, Nagaland, Missoram, Manipur, Andaman Nicobar Island	Rs.12,500/-

8.3.1.2 Accident Benefit

If any worker is disabled from doing his work as a result of accident in the course of employment, for a period of not less than 6 months or who has completely incapacitated from doing work due to any chronic disease, financial benefit of Rs.10,000/- is granted.

8.3.1.3 .Terminal benefit

The migrant worker who had contributed to the Fund for not less than 5 years and who has terminated his employment as a migrant worker and there is no chance for renewal of membership, is entitled to payment of terminal benefit subject to a minimum of Rs.5000/- and a maximum of Rs.15,000/-.

8.3.1.4. Educational benefit

The migrant worker who has been a member of scheme for a period of not less than one year is eligible to educational scholarships for his two children who are pursuing regular studies in Kerala in Government institutions or those institutions approved by Government. The educational grant is available for studies above S.S.L.C. or its equivalent. An annual grant of Rs.400 is given for pursuing paramedical course. An annual grant of Rs.500 is granted for studying 3 year degree course. Financial aid of Rs .750 is available for P.G course. Amount available for vocational studies is Rs.1500/- .

Only around 53000 migrant workers are enrolled in the scheme. A substantial population of migrant force has not taken registration. The lack of strong trade union among migrant workers is cited as a reason for poor registration of workers in the scheme.³⁶

8.3.2. Chagatai Literary Programme

Education is an important tool of social and economic empowerment. Now Kerala receives large number of migrant construction workers from different States. Majority of migrant workers do not know to speak or read Malayalam. The unfamiliarity and ignorance of Malayalam cause many hardships to the migrants. Literary programme for migrants is conducted under the project called Changathi. The name of the text book used for teaching

³⁶ See B.PRADEEP KUMAR, CONTOURS OF INTERNAL MIGRATION IN INDIA: CERTAIN EXPERIENCES FROM KERALA MPRA PAPER No.80586, 1-8 (2016). (Nov.2017). <https://mpr.ub.uni-muenchen.de/80586/>, posted 3 August 2017 23:11 UTC. See also (Dec.16,2017), <http://economictimes.indiatimes.com/news/politics-and-nation/data-bank-project-for-registration-of-migrant-workers>.

Malayalam is Hamari Malayalam. The object of the project is to enable the migrant workers to interact freely with the local population in their day to day life and thus to end the social exclusion. The project was started at Perumbavur, in the district of Ernakulam.³⁷ There were around 480 migrant labourers in 53 classes set up in 27 learning centres.³⁸

8.3.3 Awaz

The Government of Kerala started a free health insurance scheme for migrant workers known as Awaz.³⁹ All the workers coming under the age of eighteen to sixty years are eligible for enrollment in the scheme. The scheme started on 2018 January. Each migrant worker will get free insurance coverage of Rs. 15000/-and death insurance coverage of Rs. two lakhs. The beneficiary can avail the medical benefits in Government hospitals and authorized private hospitals. Awaz has another objective to collect the data of interstate migrants working in different parts of Kerala. The department will collect and codify the personal details and biometric data of migrants as a part of the scheme.⁴⁰ The labour department will establish Facilitation Centers in all districts and registered members would be given chip-embedded smart cards with biometric

³⁷ (Dec. 29, 2017), Indianexpress.com/article/india/kerala-government-to-bring-out-hamari-malayalam-textbook-for-migrants-4796259. The news appeared on the Indian Express on august 14,2017. Hamari Malayalam comprises 25 chapters dealing with various topics ranging from hygiene, health and technology to rights of workers and ethical values.

³⁸ (Dec. 21, 2017), <http://www.newindianexpress.com/states/kerala/2017/nov/29/kerala-state-literacy-mission-to-start-classes-for>

³⁹ See the Draft Labour Policy (2017) (Dec.12, 2017), <https://kerala.gov.in/policies> .

⁴⁰ (Nov. 13, 2017), <http://www.sarkariyojana.co.in/aawaz-health-insurance-scheme-migrant-labourers-kerala-introduced-soon>.

(Nov.14, 2017), <http://www.pmawasyojana.co.in/insurance-scheme-migrant-laboures-kerala>.

data and personal information.⁴¹ Working Group on Migration has recommended that

“Migrants should be provided with portable health care and basic social protection through a self-registration process, delinked from employment status”.⁴²

The insurance scheme called Awaz is really beneficial for interstate migrant construction workers. It assures security in the event of sickness and death of the worker. Worker is entitled to health care. Another advantage is the data collection of migrant workers which is essential for framing welfare measures.

8.3.4. Apna Khar

It is another novel initiative of Kerala Government for the welfare of migrant workers.⁴³ It provide housing facilitates for migrant workers. The task is entrusted to Bhavanam Foundation, a public sector non-profit company owned by the State Government. The first phase started at Kanjikode in Palakkad. Government had spent almost Rs. 8.5 crores for the construction of a four storied building with 64 rooms for migrant workers .It is built in three blocks with 32 kitchens, 96 bathrooms, 8 dining halls and cloth drying areas. One room is expected to accommodate as many as 10 workers with bunker bed facilities. It can provide accommodation for 640 workers.⁴⁴

⁴¹ (Nov.27, 2017), <http://newsclick-in-/migrant-workers-prefer-working-Kerala-more-their-own-states>.

⁴² See Ministry of Housing and Urban Poverty Alleviation , Paragraph 98 of Report of the Working Group on Migration 34 (2017).

⁴³ See Draft Labour Policy (2017) (Nov.10,2017), <https://kerala.gov.in/policies>.

⁴⁴ (Nov. 8, 2017), <http://www.thenewsminute.com/article/Kerala-first-apna-ghar-ready-hostel-house-640-MLW-71557>.

The interstate migrant construction workers are exploited in respect of their accommodation. The project called Awaz would go a long way in solving the problems of housing of migrant workers. Government shall frame sufficient guidelines to fix priority because it is not possible to provide accommodation to all the migrant workers at a time. It is an arduous task.

8.4. LEGAL SERVICES AUTHORITIES AND THE WELFARE OF INTERSTATE MIGRANT CONSTRUCTION WORKERS

The National Legal Services Authority (NALSA) was established under section 3 of the Legal Services Authority Act (1987). The Act also constituted State Legal Services Authority (SLSA), District Legal Services Authority (DLSA) and Taluk Legal Services Committee (TLSC).⁴⁵ The Legal Services Authorities in Kerala take active interest in the protection of the social security rights of interstate migrant workers.

Granting legal aid to the poor and marginalized groups is one of the functions of the legal services authorities.⁴⁶ The NALSA has framed a scheme for the unorganized workers namely NALSA (Legal Services to the Workers in the Unorganized Sector) Scheme in the year 2015. It is a revised scheme of the NALSA (Legal Services to the Workers in the Unorganized Sector) Scheme (2010). The migrant workers are included in the scheme.

The major objectives of the scheme are as follows.

- a) to institutionalize the essential legal services to the unorganized workers

⁴⁵ § 6 provides for the constitution of State Legal Services Authority, § 7 provides for the constitution of District Legal Services Authority and § 11A provides for the constitution of Taluk Legal Services Committee.

⁴⁶ See § 4 of the Legal Services Authority Act (1987).

- b) to fill up the gap between the Unorganized Workers Social security Act (2008) and its implementation.
- c) to mobilize the Government machinery to identify the unorganized workers and to register all unorganized workers under the Act and to extent the benefits.
- d) to make legal awareness among the employers about their statutory liabilities and the need for providing decent working conditions, living wages and social security to workers
- e) to make the workers aware of their legal rights
- f) to provide counseling and assistance to unorganized workers for their registration and to assist them to get their benefits under various schemes.

In order to fulfill these objectives, NALSA has framed an action plan to constitute a special cell for unorganized workers. The special cell has to organize and conduct legal literacy programmes, training and seminars for unorganized workers. The cell shall provide legal aid to the workers and conduct legal awareness programmes for the employers about their duties.

According to NALSA, the legal services authorities shall give priority to identification of unorganized workers. They can conduct survey or seek the assistance of Government authorities to collect the data of workers. The authority shall report the prevalence of bonded labour or child labour, if any. The legal services authorities shall facilitate the filing, processing and furnishing of application for registration of unorganized workers to various

welfare schemes under the Unorganized Workers Social security Act (2008). Legal literacy camps shall be conducted at work sites or community halls considering their working hours. The details of social security schemes shall be disseminated to the workers through pamphlets or media. The Para Legal Volunteers (PLV) shall assist the unorganized workers in accessing the welfare schemes.

The legal services authorities shall institute legal proceedings for the setting up of Social Security Boards under the Unorganized Workers Social security Act (2008) and Welfare Boards under the provisions of the Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act (1996) in places where they have yet not been set up. The authority shall ensure that the unorganized workers get the benefits from the existing welfare funds. If the benefits are denied to the workers legal steps shall be taken through the special cell to get the benefits.⁴⁷

In Kerala, the legal services authorities at the State (KELSA), district level and taluk level conduct medical camps for migrant workers at regular intervals. The Legal Services Authorities of different District have collaborated with the Department of Labour and District Administration to insure the migrant workers with “Awaz” (the health insurance scheme of

⁴⁷ See The NALSA (Legal Services to the Workers in the Unorganised Sector) Scheme (2015).

Kerala Government for migrant workers) and for the registration of migrant workers under the Kerala Migrant Workers Welfare Scheme(2010).⁴⁸

Legal Services Authorities have conducted various camps on the NALSA (Legal Services to the Workers in the Unorganised Sector) Scheme (2015)⁴⁹. The legal services authority can avail the services of the law students, media and public to conduct legal awareness programmes. It is necessary to educate the employees, employers, officials and the entire public for the social inclusion of migrants.

8.5. HUMAN RIGHTS COMMISSION AND WELFARE OF INTERSTATE MIGRANT CONSTRUCTION WORKERS

Section 3 of the Protection of Human Rights Act (1993) provide for the constitution of Human Right Commission at the Central level. Section 21 of the Act provide for the constitution of State Human Right Commission. According to section 12 of the Act the Human Rights Commission has the duty to undertake and promote research in the field of human rights. They can take action on negligence of a public servant in the prevention of violation of human rights of migrants. They can review the social security measures available for the migrants under the provisions of Constitution and statutes and suggest

⁴⁸ The DLSA Alleppuzha has started “Pravasi Dosth” for migrant workers. It organizes legal awareness camps, enrollment in health insurance schemes and enrollment in Kerala Migrant Workers Welfare Scheme (2010).

⁴⁹ In 2018,the DLSA Thiruvananthapuram, Kollam, Pathanamthitta, Kottayam, Alleppuzha, Ernakulam and Thrissur had conducted camps on NALSA (Legal Services to the Workers in the Unorganised Sector) Scheme (2015) (Oct.2, 2018), <http://www.kelsa.gov.in/download-activitiesjan-march.pdf>.

The DLSA Pathanamthitta has started a project called “Saathi ”,on 2-12-2017 for migrant workers under the NALSA Scheme (Oct.2, 2018), <http://www.kelsa.gov.in/downloads-activities-July-December-2017.pdf>.

remedial measures. The National Human Right Commission (NHRC) has sponsored various researches and studies for the protection of human rights of migrants. NHRC has conducted almost 66 visits to different States including Kerala to study the problems faced by the migrant workers and bonded labour during the period between October 2000 to July 2018. The teams had made valuable recommendations to the Government for the improvement of social security rights of migrants.⁵⁰

According to section 2(d) of the Protection of Human Rights Act (1993), human rights means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the international covenants and enforceable by courts in India.

There are gross violation of human rights of migrant construction workers in Kerala. Their rights to equality, dignity, right to meaningful life, right to social security etc are denied. Human Rights Commissions can take suo motu action to safeguard the rights of migrant workers.

⁵⁰ (May 28,2018), <http://nhrc.nic.in.reports/htm>. The Special Rapporteur (Child Labour/ Bonded Labour/Migrant Labour) has visited Kerala and studied the problems that are being faced by migrant workers in Kerala.

8.6. LOCAL BODIES AND THE WELFARE OF INTERSTATE MIGRANT CONSTRUCTION WORKERS

Decentralization can improve service delivery because Local Governments know the problems, requirements and preferences of their people than anyone else.⁵¹ The seventy-third amendment Act (1992) of the Constitution has inserted Part IX of the Constitution providing for the composition and powers of Panchayats. Article 243-G explains the powers, authority and responsibilities of Panchayats. Schedule XI contains a list of subjects coming under its jurisdiction like rural housing (entry 10), poverty alleviation programmes (entry 16), health and sanitation including hospitals, primary health centres and dispensaries (entry 23), family welfare (entry 24), women and child development (entry 25), social welfare including welfare of the handicapped and mentally retarded (entry 26), welfare of the weaker sections and in particular of the scheduled castes and the scheduled tribes (entry 27), public distribution system (entry 28), etc.

The seventy-fourth amendment Act (1992) of the Constitution inserted Part IX-A providing for the composition and powers of Municipalities. Article 243-W specifies the powers, authority and responsibilities of Municipalities. Schedule XII contains the lists of subjects coming under its Jurisdiction like urban planning including town planning (entry 1), planning for economic and social development (entry 3), public health, sanitation conservancy and solid

⁵¹ See Sushma Yadav, *Local Governance and Equity in Public Service Delivery*, in LOCAL DEMOCRACY & GOOD GOVERNANCE , FIVE DECADES OF PANCHAYAT RAJ 85 (Ranbir Singh & Surat Singh ed., 2011).

waste management (entry 6), safeguarding the interests of weaker sections of society including the handicapped and mentally retarded (entry 9), slum improvement and up gradation (entry 10), urban poverty alleviation (entry 11) etc.

It can be seen that the local bodies can play a significant role in securing the health and welfare of migrant construction workers. It can collect the data of migrant workers, ensure sanitation, housing facilities, welfare of migrant women and children etc.

8.7. CONCLUSION

The interstate migrant construction workers experience many difficulties in taking membership of welfare schemes of Governments. The major hindrance is the casual nature of their work. Since they keep on moving, they cannot complete the minimum number of days of work contemplated under various schemes. The unfamiliarity with language, absence of local support, poor organization, improper documentation, absence of residence proof, illiteracy and contributory nature of the schemes are other major reasons for the poor membership .

The Kerala Migrant Workers Welfare Scheme (2010) offers social security benefits to the migrants. The subscription is affordable by a worker. Even then only a small proportion of the workers are the members of the scheme. The workers lack proper awareness of social security schemes.

One of the major problems faced by the Government in formulating the welfare measures is the absence of proper data. It is not possible to find out the

exact number of migrants because of their migratory nature. The insurance programme namely Awaz for migrant workers started its pace and one of the main purposes is the collection of data of interstate migrant workers. Apna Khar is another noble initiative to solve the housing problems faced by interstate migrant construction workers.

The enrollment of migrant construction workers in the unorganized workers welfare schemes like Indira Gandhi National Old Age Pension Scheme, National Family Benefit Scheme, Janashree Bima Yojna, Rashtriya Swasthya Bima Yojna, Aam Admi Bima Yojna and Janani Suraksha Yojna are far from satisfactory. The schemes are limited to BPL households. Absence of proper documentation, poverty, misutilisation of funds, lack of sufficient infrastructure, lack of financial literacy are some of the reasons for the poor participation of workers in the scheme.

The National Legal Services Authority of India, Kerala State Legal Services Authority, District Legal Services Authorities and the Taluk Legal Services Committees are doing a commendable work in providing legal aid, legal awareness and medical aid to the migrant construction workers. They also assist in enrollment of Awaz and the Kerala Migrant Workers Welfare Scheme (2010).

The National Human Rights Commission and State Human Rights Commission can play an active role in protecting the human rights of migrant construction workers. They can conduct comprehensive studies and make field

visits. They can find out the loopholes in existing welfare legislations and suggest suitable amendments.

Protection of the marginalized sections of the society is an objective of decentralization. The local bodies can ameliorate the living and working conditions of migrant workers. They shall be provided with sufficient fund, infrastructure and guidance.

It can be found that the existing administrative measures are not adequate to cater the needs of a moving population. If properly implemented, they can contribute substantially to social security of migrant construction workers in Kerala. Even then, Kerala is far ahead of other States in protecting the rights of migrant workers. The local self government institutions in Kerala are not discharging their Constitutional obligation to protect the marginalized groups like migrants.

CHAPTER IX

EMPIRICAL STUDY OF THE INTERSTATE MIGRANT CONSTRUCTION WORKERS

The social security rights of migrant construction workers guaranteed under the human rights documents, Constitution, statutes and administrative measures are analysed in the previous chapters. The study of social security of interstate migrant workers in the construction sector is incomplete without an empirical analysis. The empirical study was conducted to evaluate the working conditions and social security of migrant construction workers in Kerala. The study also evaluate the implementation of existing legal provisions and administrative measures on social security.

9.1. HYPOTHESIS

The interstate migrant workers employed in the construction sector are deprived of their basic rights on social security. The human rights of interstate migrant construction workers are grossly violated. The Constitutional and statutory protections are not implemented for them properly. The migration is a survival mechanism and they are exploited due to their vulnerability.

9.2. GEOGRAPHICAL AREA OF STUDY

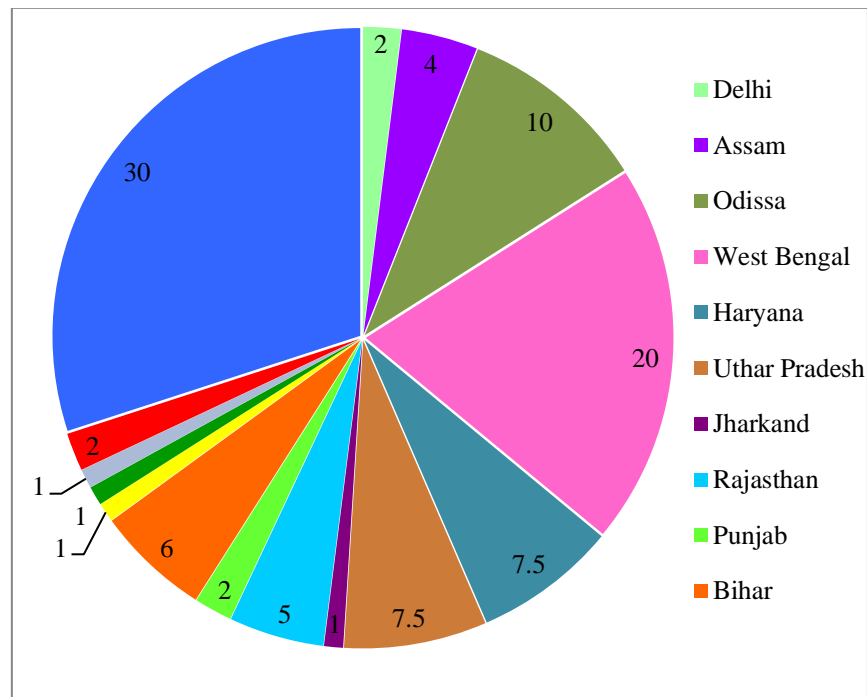
Before undertaking field study, a preliminary study was undertaken about the profile of migrant workers in Kerala. The construction workers from the district of Ernakulam were selected, as it was a prominent place for construction. All States have representation in the district of Ernakulam.

9.3. SELECTION OF RESPONDENTS

The interstate migrant workers employed in construction sector in various capacities like lifting of weight, excavation, concreting, mixing of concrete, steel bending, plumbing, painting, tile work, electricity work etc. were selected. The sample comprises of 150 male workers and 50 female workers. Respondents were selected by convenient sampling.

Table No : 9.1

HOME STATE	NUMBER OF RESPONDENTS	PERCENTAGE
Andhra Pradesh	2	1
Assam	8	4
Bihar	12	6
Delhi	4	2
Haryana	15	7.5
Jharkhand	2	1
Karnataka	4	2
Madhya Pradesh	2	1
Maharashtra	2	1
Odissa	20	10
Punjab	4	2
Rajasthan	10	5
Tamil Nadu	60	30
Uttar Pradesh	15	7.5
West Bengal	40	20
Total	200	

Graph : 9.1

9.4. TOOLS OF STUDY

The tool used for the study was semi structured questionnaire. The Questionnaire is attached as Annexure I.

Detailed questionnaire was prepared for collection of data in accordance with the objectives of the study. The questions were framed to gather information about the thrust areas of study ;

- Reasons for migration of construction workers to Kerala
- Social and economic profile of migrant construction workers in Kerala
- Living conditions of migrant construction workers in Kerala
- Working conditions of migrant construction workers in Kerala
- Problems faced by migrant construction workers in Kerala
- Documentation of migrant construction workers in Kerala
- Social security benefits of migrant construction workers in Kerala

9.5. ANALYSIS OF DATA

The responses to various questions can be analysed as follows.

9.5.1 Reasons for migration

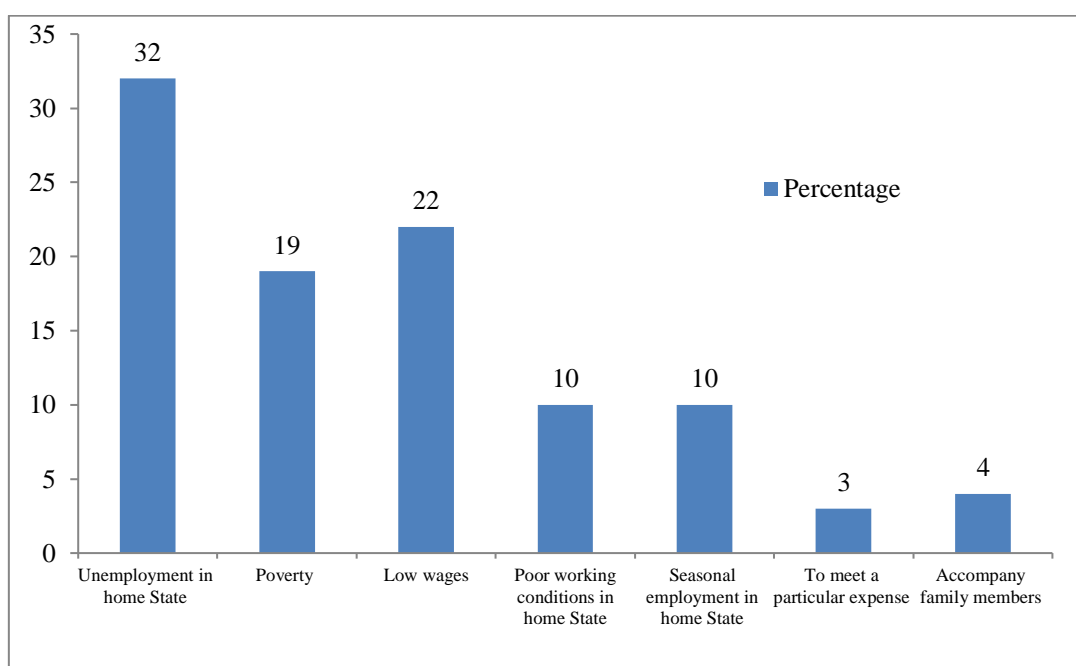
There are certain pull factors and push factors for migration of workers to Kerala

9.5.1 .1. Push factors for migration

Different responses were given by the workers. 44 respondents (22%) have answered that low wages in home State is the reason for migration. About 64 respondents (32%) stated that unemployment in the home State is the reason. 38 respondents (19%) answered that they had decided to migrate due to their poverty . 20 respondents (10%) stated that poor working conditions in home States prompted them to select Kerala. 20 respondents (10%) stated that seasonal employment prompted them to migrate. 6 respondents (3%) stated that they had come to Kerala to save money to meet some specific expenses. 8 respondents (4%) stated that they merely accompanied their family members in migration.

Table No : 9.2

REASONS FOR MIGRATION	NUMBER OF RESPONDENTS	PERCENTAGE
Unemployment in home State	64	32
Poverty	38	19
Low wages	44	22
Poor working conditions in Home State	20	10
Seasonal employment in home State	20	10
To meet a particular expense	6	3
Accompany family members	8	4

Graph : 9.2

9.5.1 .2. Pull factors for migration

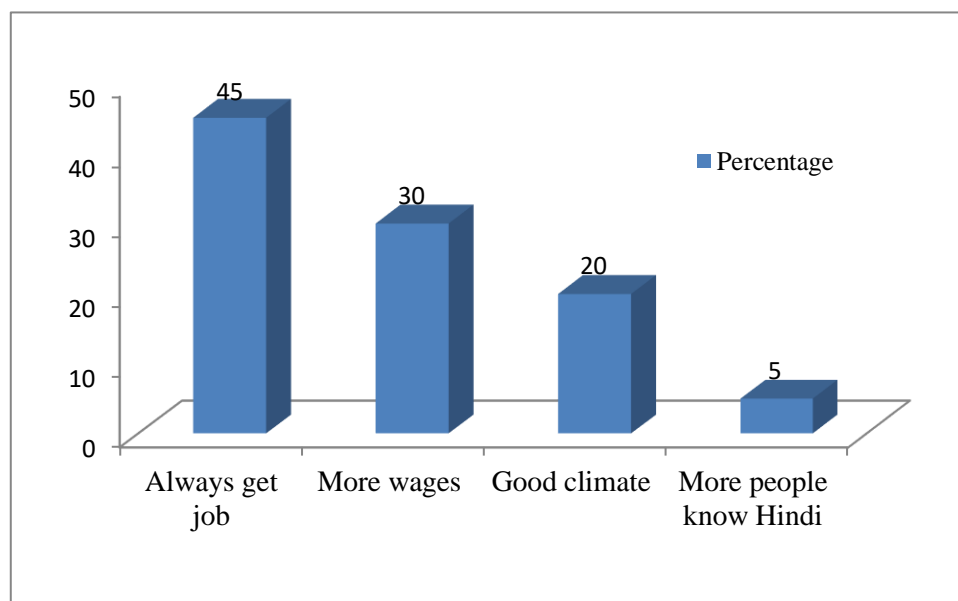
About 90 respondents, (45%) stated that the most favourable condition in Kerala was the availability of jobs. 30% of respondents had stated that the wage rates in Kerala were higher than their home States. 20% of respondents

had replied that climate conditions and availability of water were the attracting factors in Kerala. Ten workers (5%) stated that more people in Kerala understand Hindi.

Table No : 9.3

DETAILS	NUMBER OF RESPONDENTS	PERCENTAGE
Always get job	90	45
More wages	60	30
Good climate	40	20
More people know Hindi	10	5

Graph : 9.3



From the responses it can be seen that unemployment, low wages and poverty acted as major push factors for labour migration of construction workers. They have selected Kerala because of the employment opportunities and comparative high wages. It shows that migration is a livelihood strategy of workers. It is a distress migration. There is economic compulsion behind every migrant construction worker.

9.5.2. Social profile of migrant of migrant construction workers

The knowledge of economic and social background of migrant construction worker is essential to frame social security of migrants. The major areas of focus were

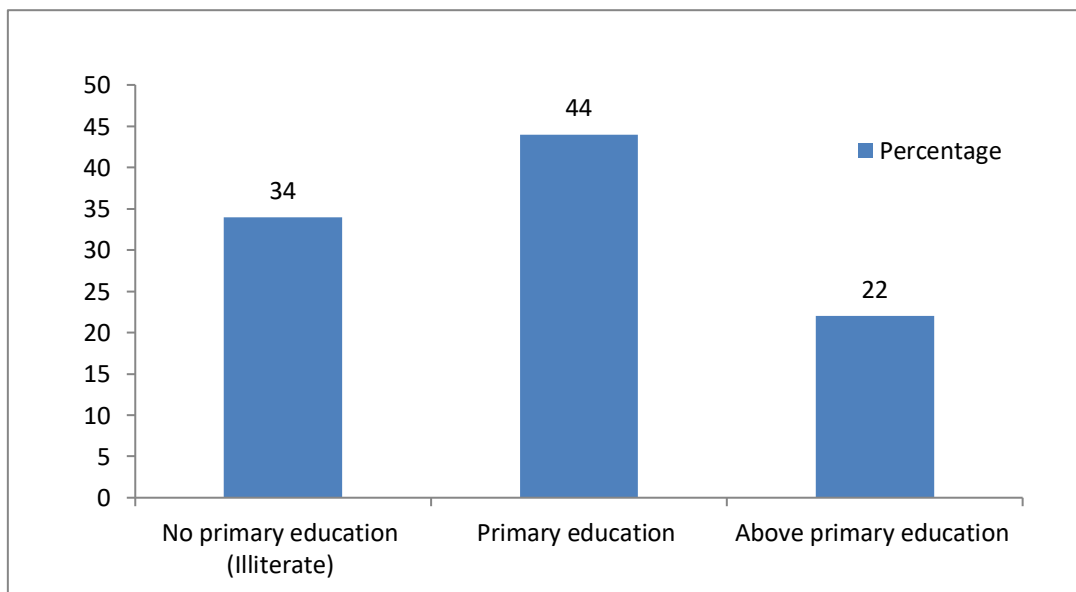
9.5.2.1.Literacy

Out of the two hundred respondents, 68 workers (34%) were illiterate. About 88 workers (44%) stated that they had only primary education and know only to read and write their mother tongue. 44 respondents (22 %) stated that they had more than primary education.

Table No : 9.4

DETAILS	NUMBER OF RESPONDENTS	PERCENTAGE
No primary education (Illiterate)	68	34
Primary education only	88	44
Above primary education	44	22

Graph : 9.4



Majority of the migrant construction workers are illiterate. Out of the literate group only 22% have secured education above the primary level. It shows that majority of migrants engaged in construction sectors are coming from low educational background. It has negative impact on their capacity to assert their rights.

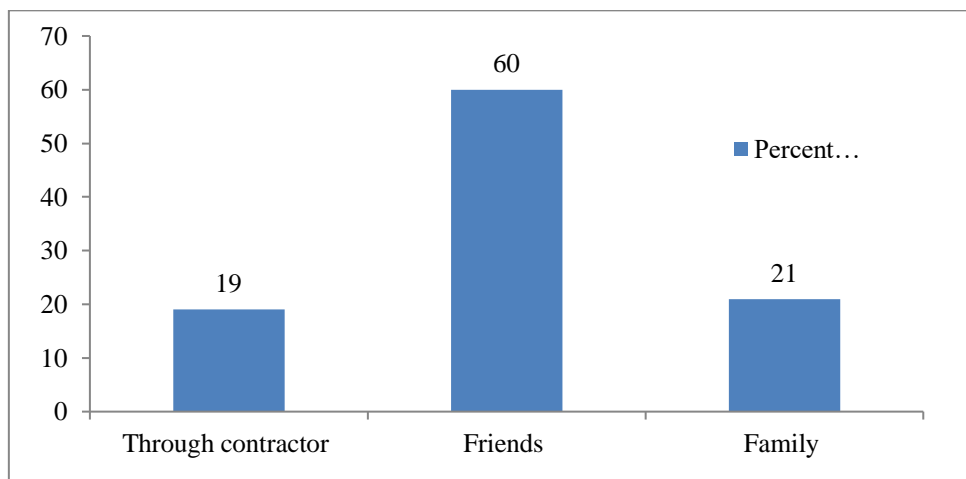
9.5.2. 2. Channel for migration

About 120 respondents (60%) had come to Kerala through their friends. 19% of respondents were recruited through contractor (they belong to northern States like Assam, Jharkand, Delhi, Rajasthan etc.) . 42 respondents (21%) came with their family.

Table No : 9.5

DETAILS	NUMBER OF RESPONDENTS	PERCENTAGE
Through Contractor	38	19
Friends	120	60
Family	42	21

Graph : 9.5



There is an active network for migrants in Kerala. Large number of internal migrants comes to Kerala through the network of migrants and not through the contractor. Because of this, the workers are outside the scope of the Inter State Migrant Workmen (Regulation of Employment and Conditions of Services) Act (1979).

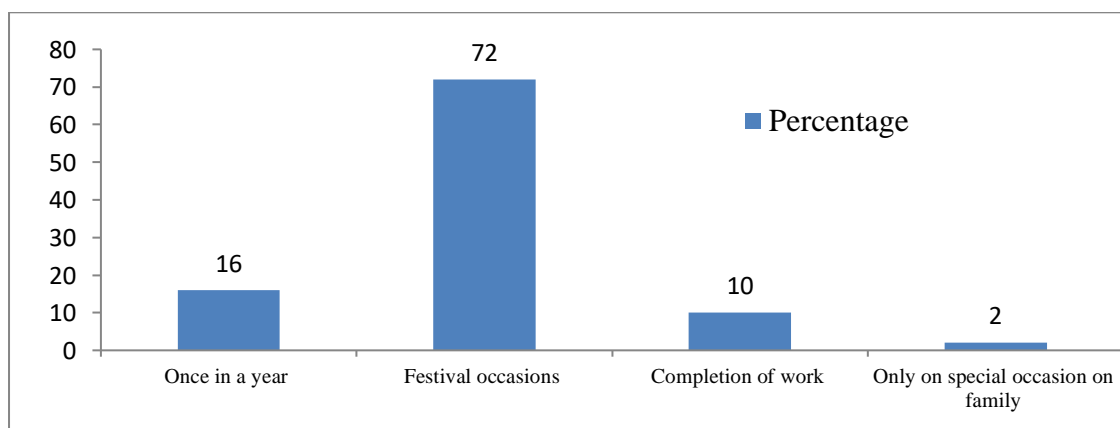
9.5.2. 3. Visit to home State

About 32 respondents (16%) stated that they used to visit home State at least once in a year. 144 respondents (72%) answered that they used to go home on festival occasions. 20 respondents (10%) stated that they would go to their home after completion of the work. 4 respondents (2%) stated that they would visit home place only on special occasions in the family.

Table No : 9.6

DETAILS	NUMBER OF RESPONDENTS	PERCENTAGE
Once in a year	32	16
Festival occasions	144	72
Completion of work	20	10
Only on special occasion on family	4	2

Graph : 9.6



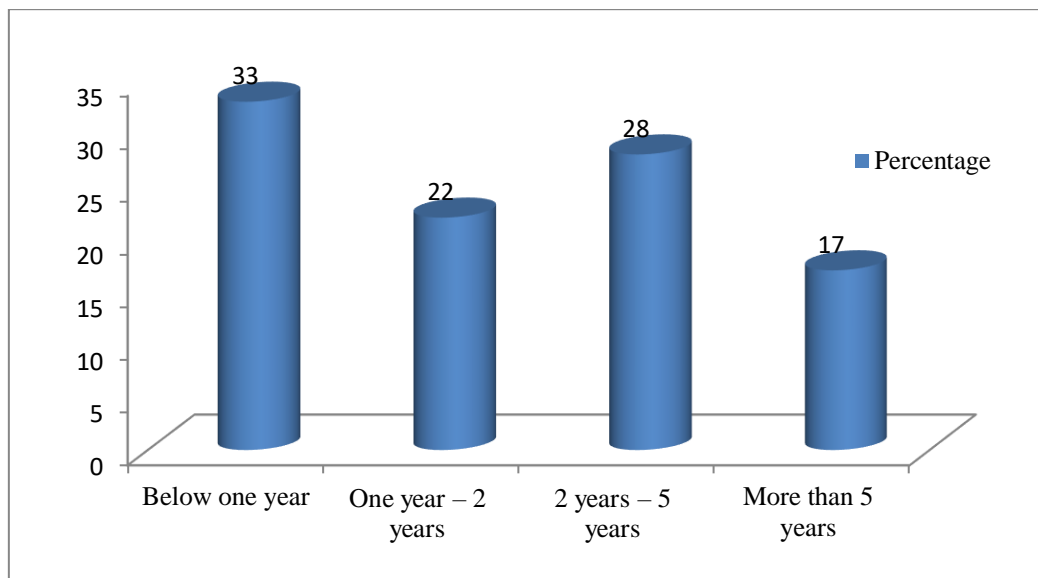
9.5.2. 4. Duration of stay

66 respondents (33%) were staying in Kerala for less than one year. 44 respondents (22%) were staying in Kerala for more than one year but less than two year. 56 respondents (28%) were working in Kerala for more than two years but less than five year. Only 34 respondents (17%) were staying in Kerala for more than five years.

Table No : 9.7

DETAILS	NUMBER OF RESPONDENTS	PERCENTAGE
Below one year	66	33
One year – 2 years	44	22
2 years – 5 years	56	28
More than 5 years	34	17

Graph : 9.7



The responses shows that majority of the workers used to visit home place frequently. The frequency of their visit to home State proves the

temporary nature of migration. The temporary status is a hindrance to assert their social security rights, because majority of social security legislations require continuous service for a minimum period.

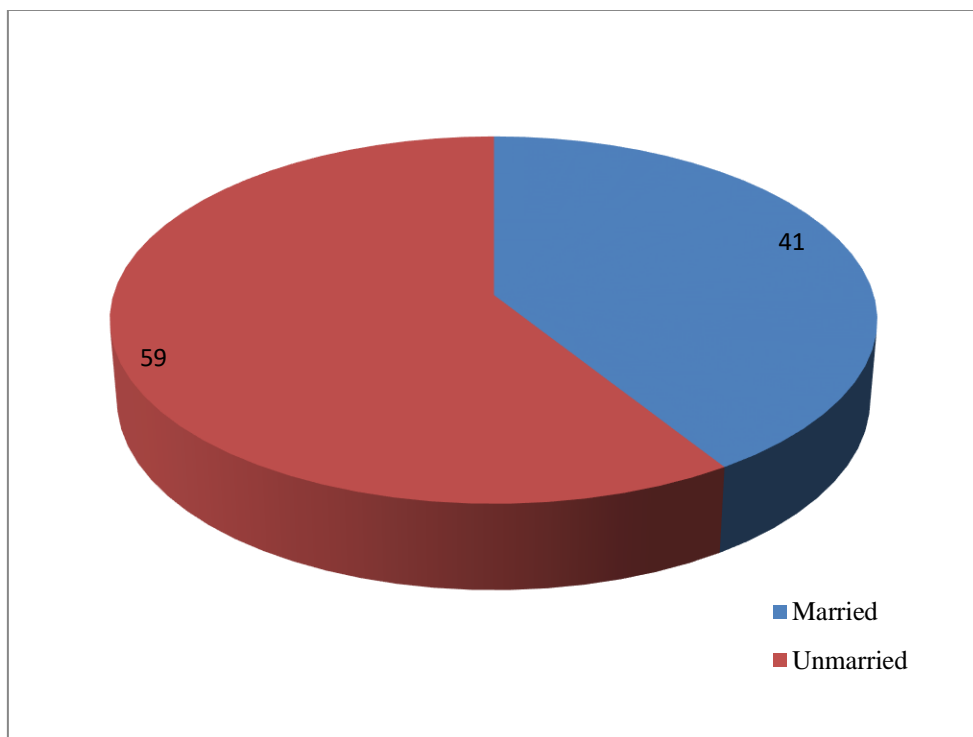
9.5.2.5. Marital status

82 respondents comprising 41% of workers were married and 118 respondents forming 59% were unmarried.

Table No : 9.8

DETAILS	NUMBER OF RESPONDENTS	PERCENTAGE
Married	82	41
Unmarried	118	59

Graph : 9.8

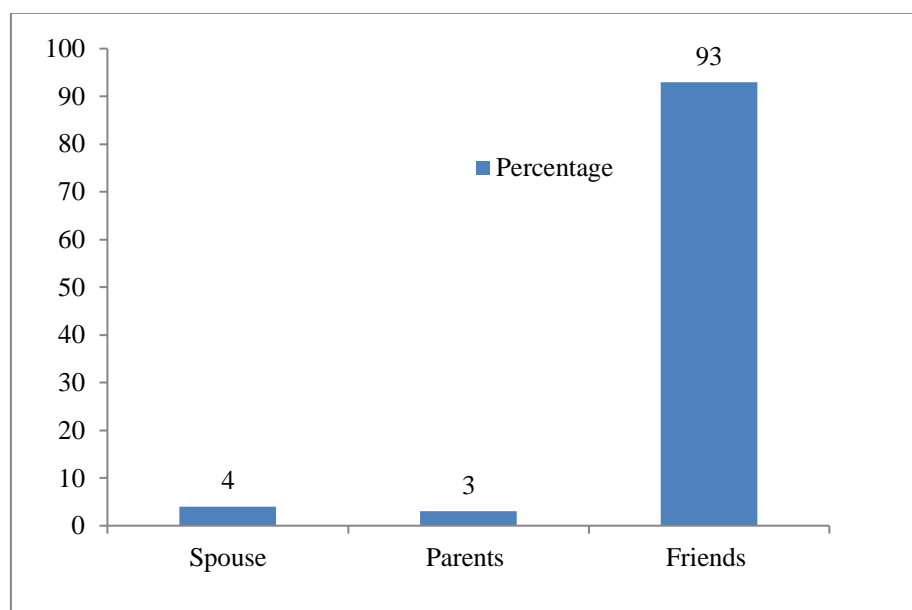


9.5.2.6. Staying with spouse

Out of the married workers, only 4% were staying with their spouse.

Table No : 9.9

DETAILS	NUMBER OF RESPONDENTS	PERCENTAGE
With Spouse	8	4
With Parents	6	3
With Friends	186	93

Graph : 9.9

Large proportion of migrant construction workers are living without the companion ship of their spouses and family. They experience the pain of separation from their family. The workers suffer the cost of migration expecting better life in Kerala. If they do not get fair conditions in Kerala, it would be great injustice. Single life in Kerala leads to many unhealthy practices like addiction to drugs and alcohol. The family of migrant workers, especially the aged parents ,children and wife face many problems due to the absence of the worker in his home.

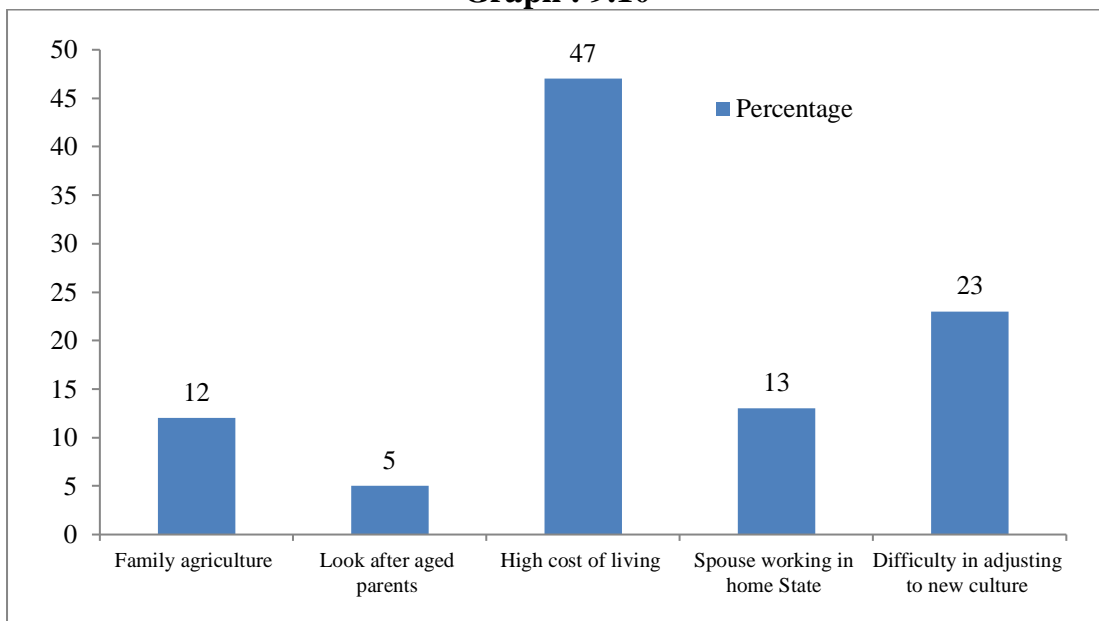
9.5.2.7. Reasons for not bringing the family to the work place

Different responses were given for not bringing the family to Kerala. 26 respondents (13%) answered that spouse was working in the home State. 24 respondents (12%) stated that spouse was looking after the family agriculture. 10 respondents (5%) stated that they had to look after their parents at home. 94 respondents (47%) did not bring their family to Kerala due to the high cost of living. 46 respondents (23%) stated that the family could not adjust in a new place due to new language and culture.

Table No : 9.10

DETAILS	NUMBER OF RESPONDENTS	PERCENTAGE
Family agriculture	24	12
Look after aged parents	10	5
High cost of living	94	47
Spouse working in home State	26	13
Difficulty in adjusting to new culture	46	23

Graph : 9.10



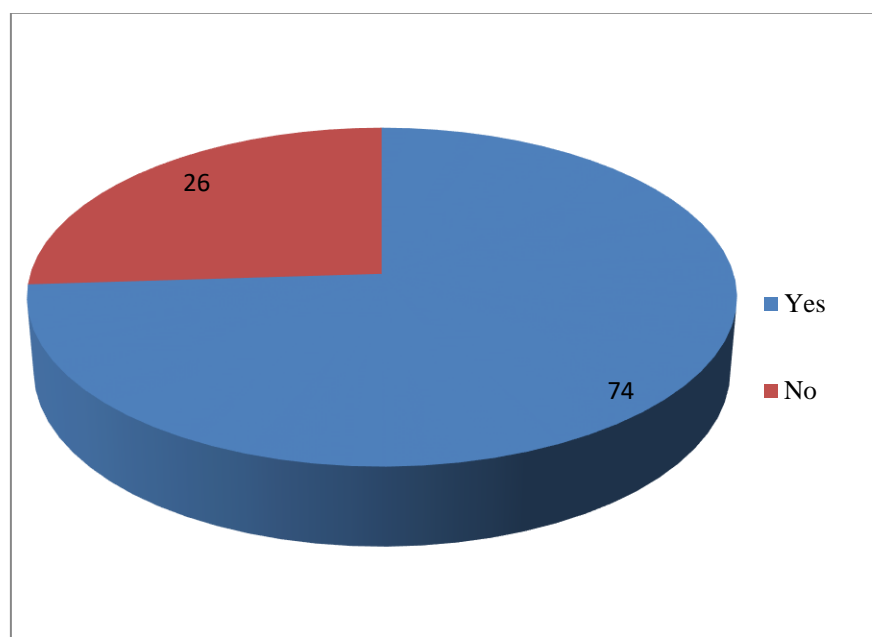
It can be seen that the majority of the migrants left their family in the home State. It reaffirms that migration is a survival strategy. They have to save as much money as they can and send it to their family in a distant place. They cannot afford the cost of living here. It shows their weak economic position, inadequate housing, poor wage structure etc.

9.5.2. 8. Bank accounts and money transaction

148 respondents (74%) stated that they had bank accounts. They are transferring money through their account to the family. 26% of respondents (52 workers) stated that they didn't have bank accounts. They had given different explanations for lack of bank accounts. 26 workers responded that they were bothered about the procedural formalities and language barriers in bank .They had no permanent local address proof to start a bank account. Ten respondents stated that they were sending money through their friends. 7 respondents stated that they asked the employer to keep their money till they return home. 9 respondents stated that they didn't have any savings at all.

Table No : 9.11

DETAILS	NUMBER OF RESPONDENTS	PERCENTAGE
Account holder	148	74
No bank account	52	26

Graph : 9.11

From the responses it can be seen that majority of the interstate migrants have bank accounts and they are sending money through their account. Lack of address proof act as a hindrance in taking bank account. Those workers who have bank accounts, do not know to operate it well. They depend on other agents who exploit them and charge commission. Lack of bank accounts deprive them of many benefits.

9.5.3. Living condition of migrant construction workers

Better living conditions are a yard stick of decent work of a migrant construction worker. Certain questions were framed to understand the nature of accommodation provided to migrants.

9.5.3.1 . Accommodation

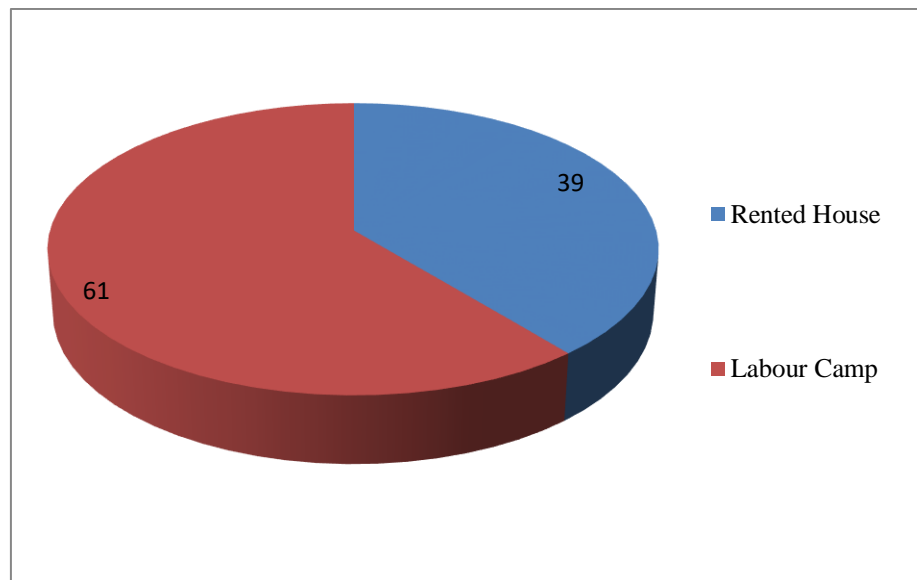
122 respondents (61%) stated that accommodation was provided by the contractor. Out of them, 98 workers stated that they were living in sheds made of asbestos sheets unsuitable to climate and lack basic facilities and 24 workers

were staying at their workplace itself. A portion of the worksite was used as their shelter in night. 78 respondents (39%) stated that they were living in a rented house and paying rent by themselves.

Table No : 9.12

DETAILS	NO. OF RESPONDENTS	PERCENTAGE
Rented house	78	39
Labour camp	122	61

Graph : 9.12



The residential facilities provided by the contractors are deplorable. The local land owners rent out their buildings or lands to migrant construction workers in exploitative terms. The worker do not get basic facilities and protection from wind, rain or heat. It shows the violation of statutory duties of employers and contractors under the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act (1979) and the Building and

other Construction Workers (Regulation of Employment and Conditions of Service) Act (1996).

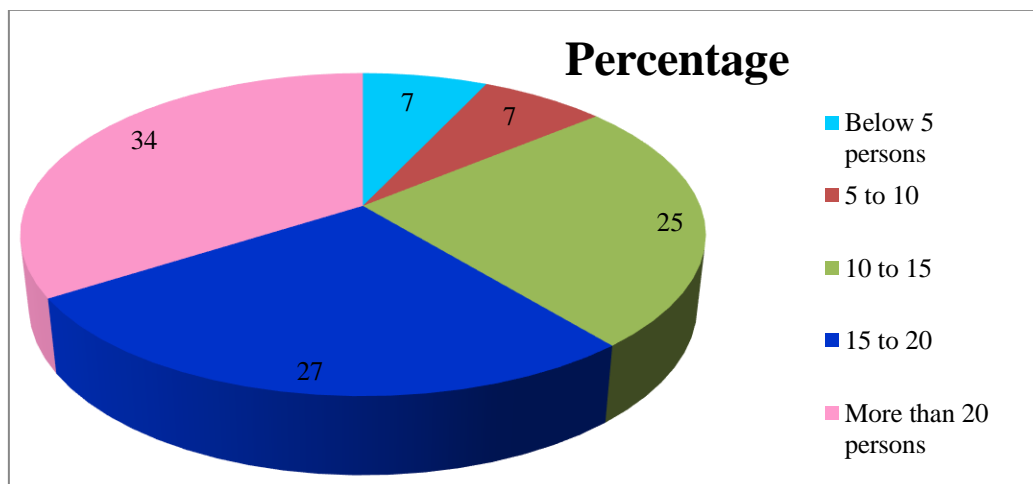
9.5.3.2. Number of migrant workers residing in house

14 respondents (7%) stated that number of persons staying in their house is less than five. 14 respondents (7%) stated that number of persons staying in their house was less than 10 but more than five. 50 respondents (25%) stated that number of persons residing in their house was between ten and fifteen. 54 respondents (27%) stated that up to 20 persons were staying in a single house. 68 respondents (34%) stated that more than 20 persons were staying in a single house .

Table No : 9.13

DETAILS	NUMBER OF RESPONDENTS	PERCENTAGE
Below 5 persons	14	7
5 - 10	14	7
10 - 15	50	25
15 - 20	54	27
More than 20 persons	68	34

Graph : 9.13



A house means one or two rooms. There is no uniformity as to the number of workers in a house. It depends on the contractor, nature of work and the place. The migrant construction workers live overcrowded. It is the violation of the Inter State Migrant Workmen Rules (1980) and (1983).

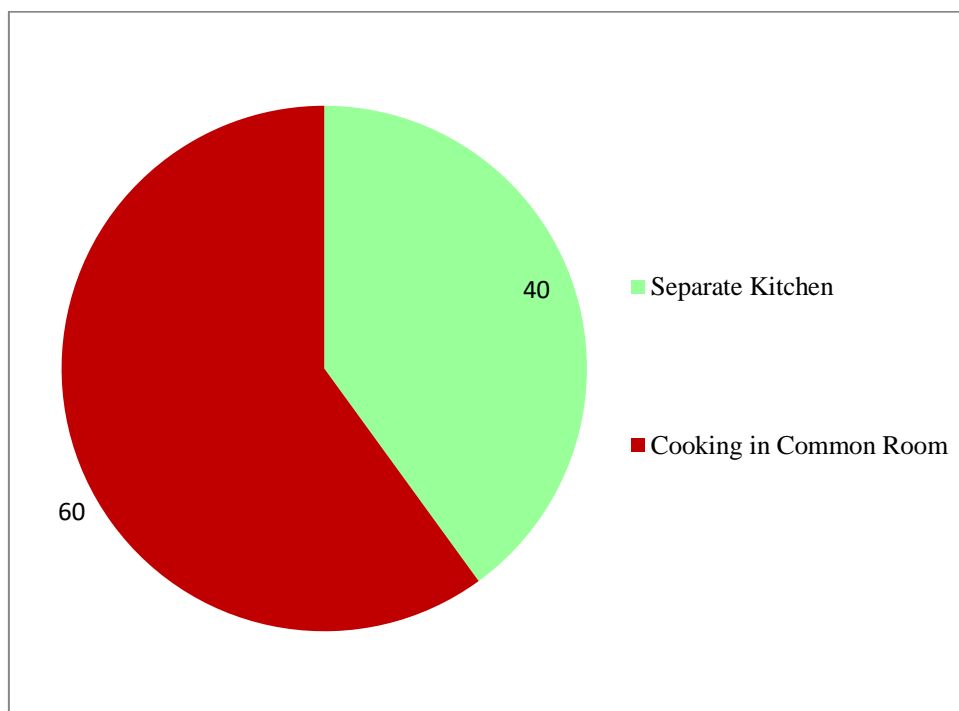
9.5.3. 3. *Cooking facilities*

With regard to cooking facilities, 80 workers (40%) stated that they were cooking in a common room and 120 workers (60%) stated that there was separate facility for kitchen.

Table No : 9.14

DETAILS	NUMBER OF RESPONDENTS	PERCENTAGE
Separate kitchen	80	40
Common room	120	60

Graph : 9.14



A large group of the migrant workers use the same room for sleeping and cooking which is a unhealthy practice. It is also violation of statutory provisions and Rules.

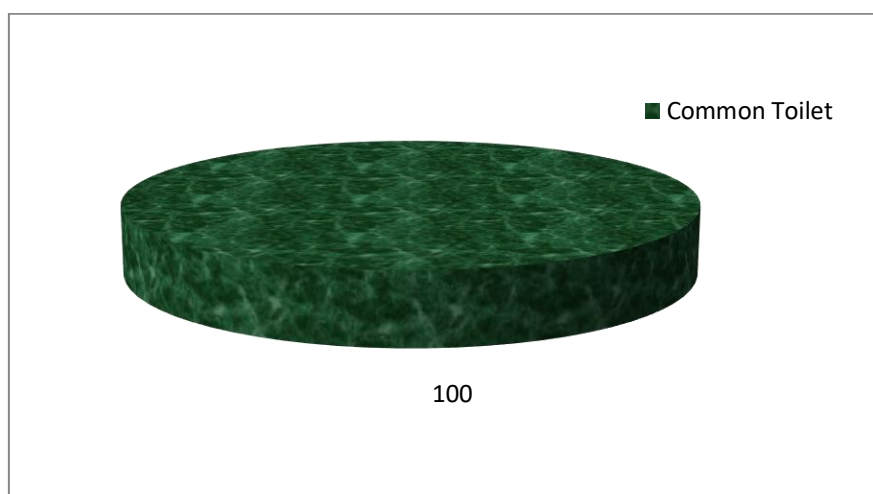
9.5.3. 4 .Toilet facilities

All the workers (100%) stated that there was only one common toilet and it was unhygienic. There was no sufficient supply of water.

Table No : 9.15

DETAILS	NUMBER OF RESPONDENTS	PERCENTAGE
Common unhygienic Toilet	200	100

Graph : 9.15



From the responses it can be found that the toilet facilities of migrant construction workers are highly inadequate and unhygienic. It is the violation of the Rules framed under Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act (1979), the Building and other

Construction Workers (Regulation of Employment and Conditions of Service) Act (1996) and The Contract Labour (Regulation and Abolition) Act (1970).

9.5.4. Health care of migrant construction workers

Health of migrant worker is directly connected to his productivity. The important questions put forward under this head are :

9.5.4.1. Expenses of treatment

40 respondents (20%) replied that they had met with accidents while on work. The workers opined that absence of proper safety mechanism and negligence of employers and contractors were the reasons for accidents at work sites. The workers had no awareness about the occupational safety and health care. 92% of workers stated that in case of any illness, whether resulted from employment or not, they had to bear the expenses themselves. 5% of respondents (10 numbers) got the assistance from the employer and 3% of respondents (injured) got the assistance of contractors in meeting the hospital expenses.

Table No : 9.16

DETAILS	NUMBER OF RESPONDENTS	PERCENTAGE
Medical expense borne by the worker	184	92
Medical expense borne by the employer	10	5
Medical expense borne by the contractor	6	3

Graph : 9.16

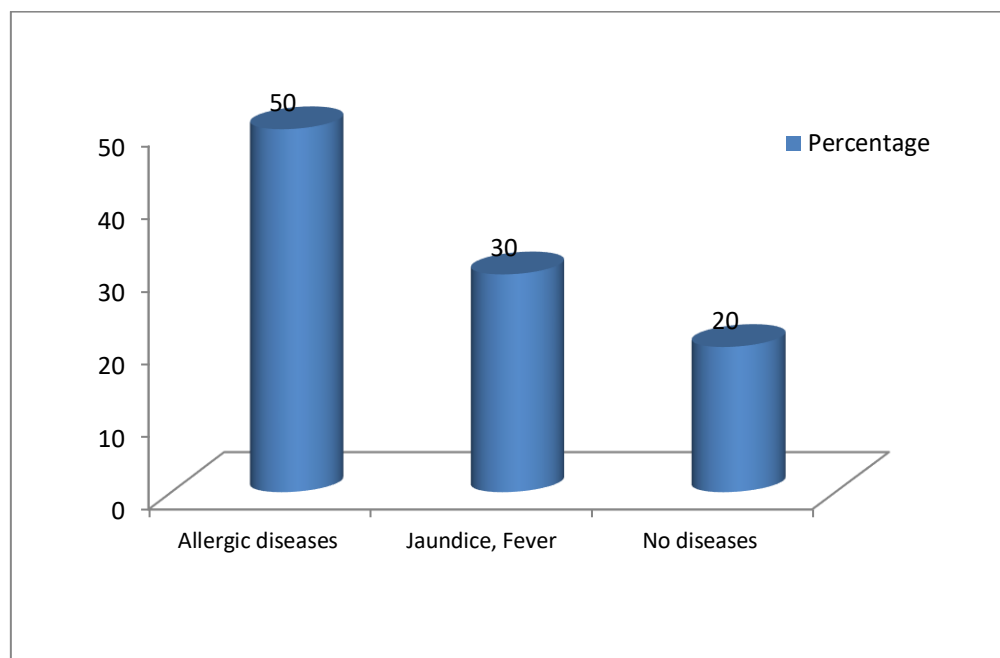
From the responses it can be seen that the migrant workers do not get health awareness. There is no safety mechanism. There is no free health care for the migrant construction workers. Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act (1979) and the Rules as well as the Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act (1996) and the Rules provide for free health care which is not actually done.

9.5.4. 2. Health issues faced by worker(frequent diseases)

50% of the workers complained of allergic diseases. 30% had complained of frequent fever, water borne diseases and jaundice. 20% stated that they had no complaints.

Table No : 9.17

DETAILS	NUMBER OF RESPONDENTS	PERCENTAGE
Allergic Diseases	100	50
Jaundice, Fever	60	30
No diseases	40	20

Graph : 9.17

The allergic diseases contracted by the construction workers indicate that they do not get safety appliance to get protection from the frequent contact with cement, dust etc. The prevalence of water borne diseases prove that there is lack of sufficient supply of fresh water, hygienic food and sanitation facilities.

9.5.4. 3 . Access to hospitals and health care

Majority of the respondents, about 90% answered that they would approach the nearby medical shop and purchase some medicines according to

the symptoms. Only 10% of respondents would consult a medical practitioner. The respondents had given different explanation for their behavior. 60% workers stated that they didn't get time to visit a registered practitioner as they have to lose the wages for one day. 10% of workers stated that there was nobody to look after them if they were admitted in a hospital. Their family was staying in their home State. 15% stated that they could not do the investigations from the laboratories in time due to language problem and financial problem. 15% stated that the contractor would compel them to leave the place and to get treated in his home place.

Table No : 9.18

DETAILS	NUMBER OF RESPONDENTS	PERCENTAGE
Medical consultation	20	10
Purchase medicine from medical shop	180	90

From the responses it can be seen that access to public health care to migrant construction workers inadequate due to many reasons like poverty, language barrier, ignorance, alienation from family etc. It also shows the exploitation practiced on the workers by the society.

9.5.5. Problems faced by migrant construction workers

9.5.5.1. Following are the unfavorable conditions

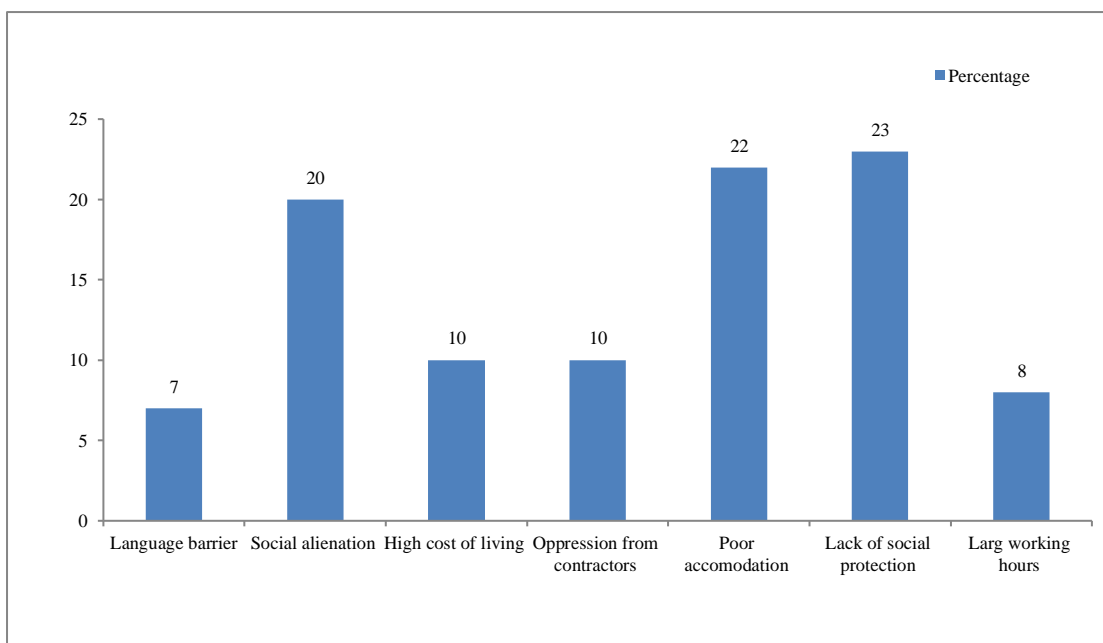
20% of the respondents stated that they were facing social alienation. 20 respondents (10%) stated that cost of living was high. 7% of respondents stated that language was a barrier for communication and social integration. 20

respondents (10%) stated that they were facing oppression from the contractors and employers. 22% of the respondents complained about poor accommodation and toilet facilities provided to them. 23% of the respondents stated that they did not get any social protection in the event of unemployment, death, injury and sickness. 16 respondents (8%) had complained about long working hours and lack of proper safety mechanism.

Table No : 9.19

UNFAVORABLE CONDITIONS	NUMBER OF RESPONDENTS	PERCENTAGE
Language barrier	14	7
Social alienation	40	20
High cost of living	20	10
Oppression from contractors	20	10
Poor accommodation	44	22
Lack of social protection	46	23
Long working hours	16	8

Graph : 9.18



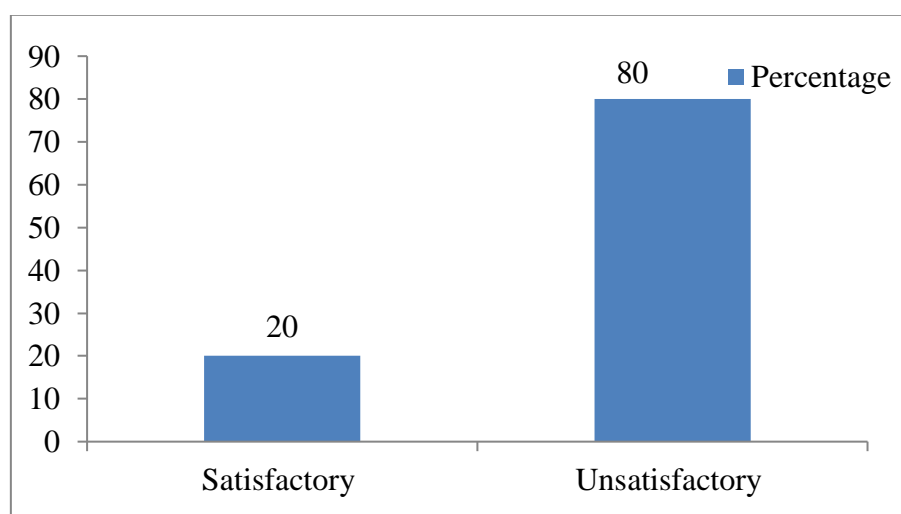
The migrant workers suffer from social insecurity, poor housing, long working hours, social exclusion etc. It shows the violation of provisions of the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act (1979) and the Rules as well as the Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act (1996) and the Rules.

9.5.5. 2. Access to justice

80% of the respondents were not satisfied with the system and complained that in case of any violence against them, there was no one to rescue them. The public would turn against them even for minor issues. They were afraid of approaching the police and ignorant of court procedure. They could not afford the cost of engaging lawyers. 20% were satisfied with the existing system.

Table No : 9.20

DETAILS	NUMBER OF RESPONDENTS	PERCENTAGE
Satisfactory	40	20
Unsatisfactory	160	80

Graph : 9.19

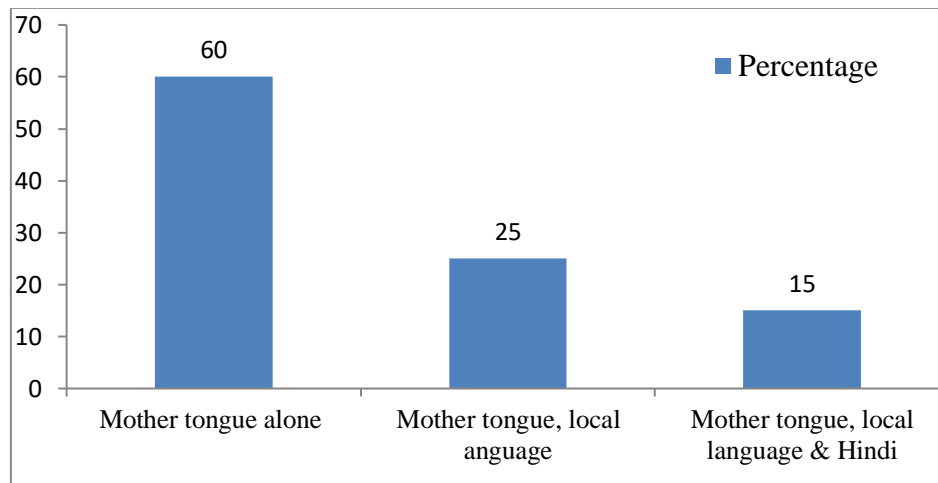
It shows the discrimination faced by the migrant construction workers in accessing justice delivery system. They are not supported by the rest of the society. They do not get free legal aid. They are not aware of their right to legal aid.

9.5.5. 3 .Access to local language

60% of respondents (120 workers) stated that they could communicate only in their mother tongue. They were experiencing difficulty in dealing with local population .25% of the sample responded that they could manage mother tongue as well as local language. 15% of the respondents stated that they could understand mother tongue, Hindi and local language.

Table No : 9.21

DETAILS	NUMBER OF RESPONDENTS	PERCENTAGE
Mother tongue alone	120	60
Mother tongue, local language	50	25
Mother tongue, local language & Hindi	30	15

Graph : 9.20

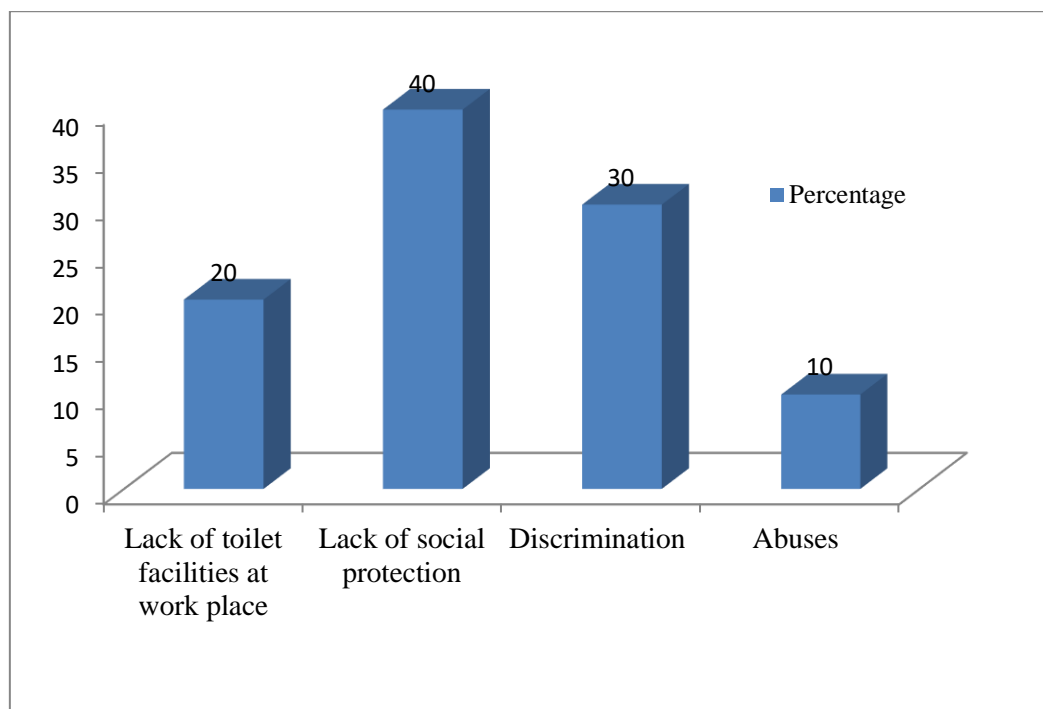
From the responses it can be found that the majority of the migrant construction workers face difficulty in understanding and speaking local language. It is a hindrance on social integration of migrant workers. The Unorganised Workers Social security Act (2008) has provisions for Workers Facilitation Centre. If it is implemented properly, the language problem of migrants can be addressed to some extent.

9.5.5.4. Women migrant workers

20% of women migrant workers complained about lack of toilet facilities in the workplace. 40% of the respondents complained about the lack of social security in the event of sickness and maternity. 60 workers (30%) complained that they were not getting equal wages and working conditions with other workers. They were discriminated at the workplace. 10% of the respondents had to face sexual abuse in the form of abusive languages from other workers and contractors. Their right to dignity is not respected in the workplace.

Table No : 9.22

DETAILS	NUMBER OF RESPONDENTS	PERCENTAGE
Lack of toilet facilities at work place	40	20
Lack of social protection	80	40
Discrimination	60	30
Abuses	20	10

Graph : 9.21

The women migrant construction workers face discrimination and social insecurity. The Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act (1979) and the Rules are silent on the social security rights of women workers.

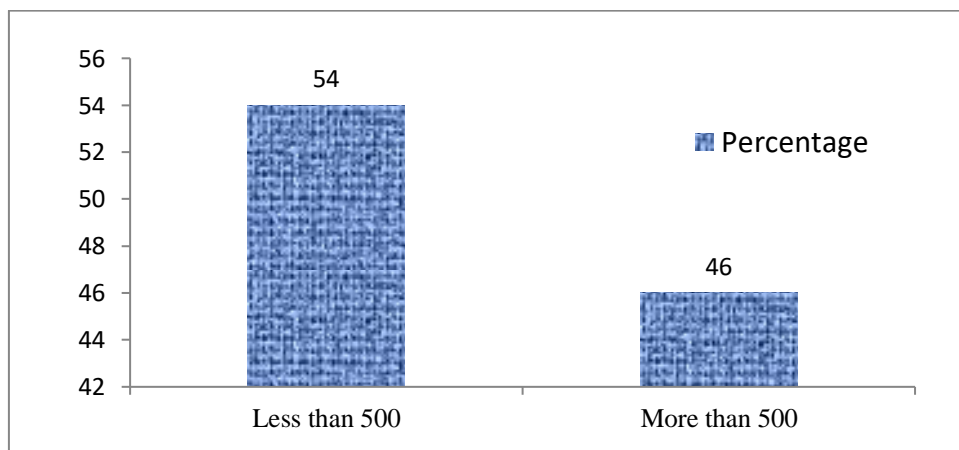
9.5.5. 5. Adequacy of wages

The wage they received in Kerala was higher than the wages in their home State. All the respondents (100%) stated that they were getting wages less than local workers doing the same work. All the respondents stated that they were getting wages after deducting the commission to contractors and expenses for food. The women migrants were getting fewer wages compared to local workers and their male counterparts. About 190 respondents (95%) had stated that they had weekly off. The migrants had to work for more than 8 hours a day. They would start their work early in the morning and it would last till evening. There were many shifts also. There was no difference in wages, when they were taking night shifts. Only 46% of workers replied that they are getting more than 500 Rs. every day.

Table No : 9.23

DETAILS OF WAGES /DAY	NUMBER OF RESPONDENTS	PERCENTAGE
Less than 500	108	54
More than 500	92	46

Graph : 9.22



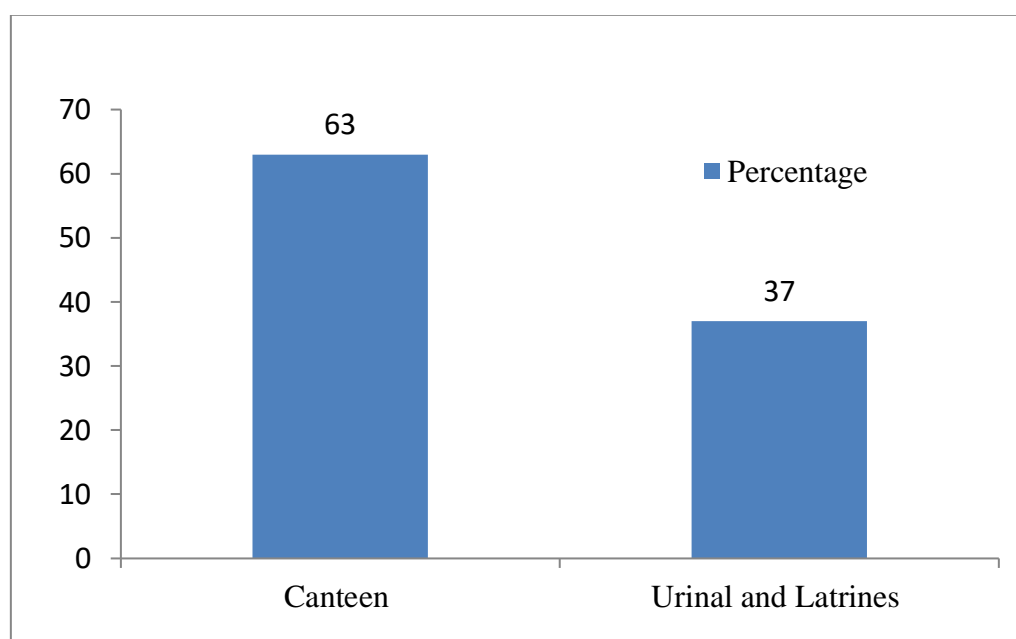
From the above responses, it can be seen that the migrant workers do get higher wages than they receive in their home State, but they are not getting equal wages with local workers. It shows the economic exploitation of migrant construction workers. Similarly they are subjected to the exploitation by contractors. The respondents told that they did not know the actual percentage of commission to contractors. It means that they did not know their actual wages. They had to be satisfied with what they received from contractors. It shows the violation of The Payment of Wages Act (1936), The Minimum Wages Act (1948) and The Contract Labour (Regulation and Abolition) Act (1970).

9.5.5.6. Availability of canteens, urinals, latrines

Only 63% of respondents (126 numbers) stated that canteen or lunch was provided at work site. 37% of respondents stated that urinals or latrines were made available at workplace.

Table No : 9.24

DETAILS	NUMBER OF RESPONDENTS	PERCENTAGE
Canteen	126	63
Urinal and latrines	74	37

Graph : 9.23

From the responses, it can be seen that there is blatant violation of labour laws with regard to toilet facilities at workplace. It will deteriorate the health of workers as well as neighbours. There is no gender friendly atmosphere in work place for women.

9.5.6. Documentation of workers

Registration of the worker is the first step to receive social security benefits. The questions framed are;

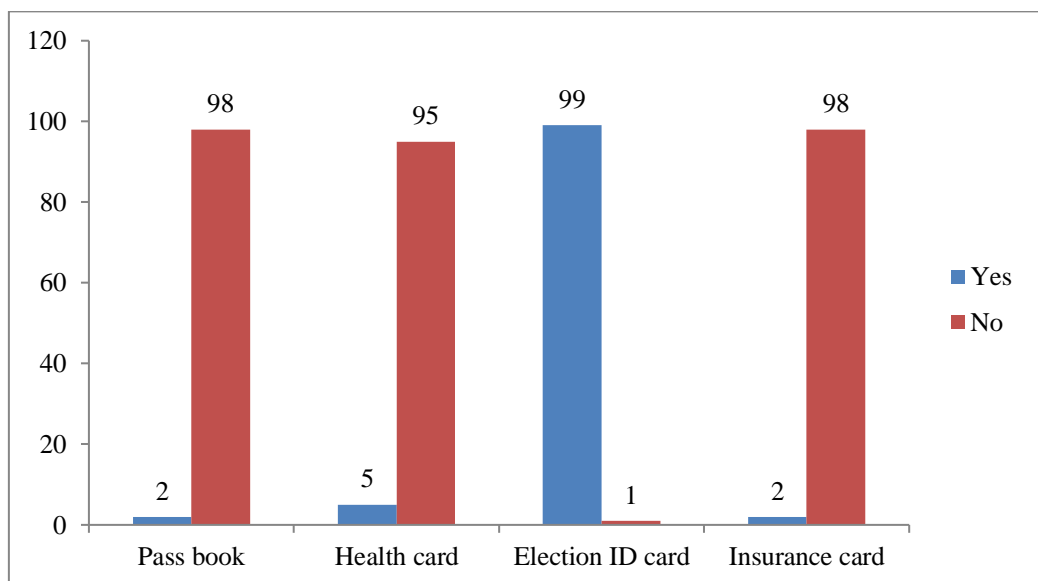
9.5.6.1. Possession of identity card, labour card, health card or insurance card

99% of respondents (198 workers) possessed election identity card. For majority of the respondents it was the only proof of their identity. Only 4 workers (2%) had possessed the pass book granted under the ISMW Act. Ten respondents (5%) possessed health card and 4 workers (2%) had insurance card. None of the respondents were paying any kind of regular subscriptions to insurance policy.

Table No : 9.25

DETAILS	PASS BOOK		HEALTH CARD		ELECTION ID CARD		INSURANCE CARD	
	NO OF RESPONDENTS	PERCENTAGE	NO OF RESPONDENTS	PERCENTAGE	NO. OF RESPONDENTS	PERCENTAGE	NO. OF RESPONDENTS	PERCENTAGE
Yes	4	2	10	5	198	99	4	2
No	196	98	190	95	2	1	196	98

Graph : 9.24



The above responses show the poor documentation of migrant construction workers in welfare schemes. The majority of the workers have election identity card. The local politicians of their home State take active interest in getting election identity card because they require the vote of

workers. But no one is interested in enrollment of welfare schemes. It shows the poor implementation of statutes like The Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act (1979), the Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act (1996) and administrative measures like Kerala Migrant Workers Welfare Scheme (2010).

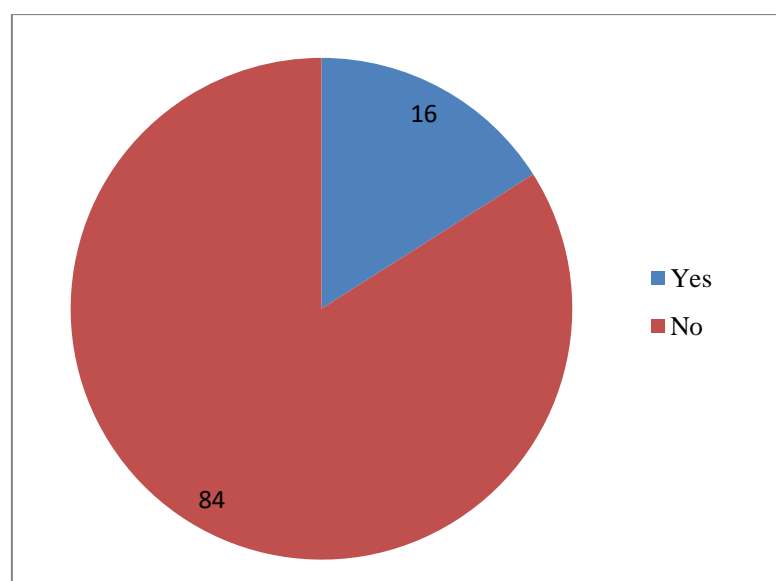
9.5.6.2. Exercise of voting rights

Only 16% had voted in the last election. The respondents told that it was not economical to sacrifice wages and spend money to travel home States for exercising voting rights. They also fear the possibility of replacing the workers.

Table No : 9.26

DETAILS	NUMBER OF RESPONDENTS	PERCENTAGE
Yes	32	16
No	168	84

Graph : 9.25



The majority of the workers (84%) could not vote during in the previous election because they were working in another State and they could not afford the cost of travel to exercise their voting rights. It is the deprivation of their political rights.

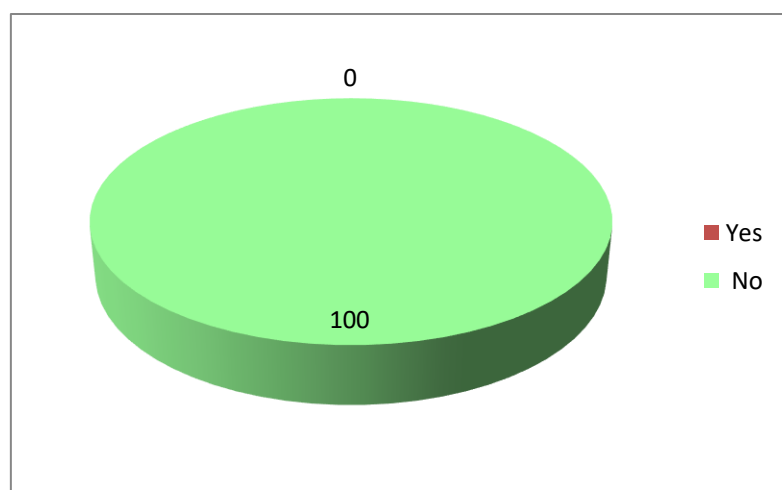
9.5.6.3. Membership in welfare board

100% respondents stated that that they didn't have membership in any of the welfare board. The respondents stated that they were unable to make regular contribution to welfare schemes due to their casual nature of work. They wanted to save their wages and remit to their family in a distant place. None of them received any benefits from Government.

Table No : 9.27

MEMBERSHIP IN THE WELFARE BOARDS	NUMBER OF RESPONDENTS	PERCENTAGE
Yes	0	0
No	200	100

Graph : 9.26



The migrant construction workers do not get the benefit from the Construction Workers Welfare Fund, Migrant Workers Welfare Scheme, or other Government programmes for the unorganized workers. It shows that they do not get any social protection on contingencies like old age, unemployment, sickness, invalidity, maternity, death of the bread winner, employment injury etc.

9.6. CONCLUSION

The important findings of the study are as follows :

There is no single reason that explains the internal migration of construction workers to Kerala. There are push factors and pull factors for migration. The pull factors in Kerala are employment opportunities, comparatively better wage structure, good climate, migrant network etc. The push factors at home States are unemployment, low wages, seasonal nature of employment and poverty etc. But majority of the construction workers have migrated to Kerala due to their economic compulsion. Migration is a survival mechanism for them, and their sole purpose is to save money and return home. Majority of the workers save money and send it to home either through bank accounts or other means.

The migrant construction workers get higher wages and more opportunities in Kerala than they get in their home State. But they are discriminated with local workers. They have to pay commission to the contractors. Their wage structure is not transparent.

The migration is for a short duration. They return home and migrate again. There is no formal employer-employee relation. They have contact only with the contractor.

The migrants are coming from low social, economical and educational back ground and need of social protection. The illiteracy and ignorance is a great hindrance of migrant construction workers to claim their social security rights. It also exacerbates their vulnerability to abuses.

Majority of migrant construction workers are not recruited by a contractor licenced under the ISMW Act.

The high cost of living prevents the majority of the migrant construction workers in bringing their family to Kerala. It is very difficult to get proper housing for migrants. Separation from family makes adverse consequence in the social and psychological life of the workers. They are suffering the severance of emotional ties of their family, relatives, friends and native place for their survival. It is the cost of migration.

The amenities guaranteed under Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act (1979) and The Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act (1996) and the and Contract Labour (Regulation and Abolition) Act (1970) are not provided for internal migrants in Kerala. The legislative provisions that prevents overcrowding of workers are not followed. The living conditions of the workers are miserable. The female migrant workers are subjected to gender discrimination and violation of right to

dignity. The women workers lack women friendly atmosphere at construction sites. The migrant workers are the victims of epidemics due to poor hygiene. They do not get fresh water in adequate quantity.

Unfamiliarity with the local language is a serious problem faced by interstate migrants. The identity documents in possession of majority of internal construction migrants are the election identity card. But they cannot exercise their political franchise effectively due to employment in a different place. They lack other documents like pass book or identity cards envisaged under various labour laws.

They lack membership in welfare boards and are devoid of social security benefits from Governments. Though there are various welfare schemes for migrants and construction workers, the unorganized migrant workers are not registered.

It can be concluded that the unorganized interstate migrants employed in construction sector in Kerala are devoid of Constitutional and statutory protections with regard to their health, living conditions and social security benefits. They are subjected to gross violation of human rights and exploitation in social and economical life. They suffer from social exclusion, unfamiliarity with local language, poor accommodation, poor toilet facilities, lack of health care, exploitation by the employers and contractors, long working hours, discrimination and so on. They lack social security. The study shows the blatant violation of provisions of Constitution and welfare legislations like

Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act (1979), The Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act (1996), Contract Labour (Regulation and Abolition) Act (1970), The Payment of Wages Act (1936) and The Minimum Wages Act (1948).

CHAPTER X

CONCLUSION AND SUGGESTIONS

*“Bowed by the weight of centuries he leans
Upon his hoe and gazes on the ground,
The emptiness of ages in his face,
And on his back the burden of the world.”¹*

Human resources are the best capital for the development of a nation. The work should lead to the maximum utilization of potentiality of a person .It shall guarantee human dignity and self realization of an individual. The social security rights are essential to maintain the dignity of an individual. Kerala witnesses an unprecedented flow of migrant workers from all over India. The majority of them are employed as construction workers. In fact the construction sector in Kerala predominantly depends on migrant workers. But the contributions of migrants to the economy are often disregarded by the State and society. Their poverty and vulnerability is always exploited. The interstate migrant construction workers in Kerala are deprived of the basic labour rights especially the right to social security.

The study focuses on the following aspects.

- The concept of migration, labour welfare and social security,
- The human right to social security of migrant construction workers,

¹ “The Man with the Hoe” by Edwin Markham (1899).

- The Constitutional and statutory protection of social security of migrant construction workers,
- The administrative measures for the protection of social security of migrant construction workers,
- The adequacy and comprehensiveness of existing protections.

The following hypothesis was formed for the study. The interstate migrant construction workers in Kerala do not receive the social security rights guaranteed by the international documents on human rights, Constitution, welfare legislations and administrative measures in an effective way. The existing laws are not comprehensive enough to protect their social security rights. There is a great gap in the implementation procedure.²

The primary reason for migration of labour is economic improvement. There are some pull factors like employment opportunities, comparatively better wages, good climate, availability of trains, advancement of communication, migrants network etc that act as favourable factors for migration to Kerala. There are push factors in home States like poverty, unemployment, low yield in traditional occupations, less wages, natural calamities, underdevelopment of regions, etc that motivate the workers to migrate to Kerala.³ Depending on the duration of stay, the migrant workers can be classified as short term migrants or long term migrants. Majority of the construction workers in Kerala are short term migrants or seasonal migrants. They keep on travelling from place to place. They visit home periodically and

² *Supra* pp 31 & 32

³ *Supra* pp 4 & 5

have no intention to settle in Kerala. Their occupation is casual and unorganized in nature.⁴

The labour migration is beneficial to both the worker and State. For poor migrants, it is a strategy for survival while for a skilled migrant, it is a strategy for betterment of life. Home State gets remittance and the experience of migrant workers. It also helps the society to overcome the crisis created by unemployment. Kerala gets the service of migrant construction workers in the development process. They fill up the labour shortage in informal sector. The interstate migrants add to the cultural richness of Kerala.⁵

Though the interstate migrant construction workers contribute substantially to the development of the economy, the social and economic issues arising from migration are not addressed properly. Globalization increased the employment opportunities in construction sector, but it reduced the social security rights. It informalised the labour and reduced the accountability to workers.

The interstate migrant construction workers do not enjoy decent work. The productive employment, observance of basic labour rights, social security, representation and social dialogue are the major components of decent work.⁶ Freedom of association, freedom from discrimination, freedom from child labour and freedom from forced labour are the indispensable rights of a worker. Right to social security is an essential component of decent work. Social

⁴ *Supra* p.8

⁵ *Supra* p.10

⁶ *Supra* p.11

security includes income security as well as economic security. The work which is not decent is considered as slavery.

The study on social security of interstate migrant construction workers assumes significance because in spite of legal provisions they face various social and economic issues in Kerala.⁷ They do not get equal wages and working conditions with native workers. They face gross discrimination at work place and are deprived of social security rights.

Their employment is precarious in nature. There is no security on work and income. They do not receive proper health care. Due to poor living conditions and poverty, they are always susceptible to diseases. The employers do not follow the guidelines on occupational safety. They are employed in hazardous occupations like construction industry without proper safety mechanism. In case of any accidents, occupational diseases or death, there is no one to shoulder their responsibility.

Their housing of migrants is deplorable. They do not get work place amenities. They face social exclusion in life. They are devoid of right to collective bargaining. The migrant women and children are more vulnerable to abuses.

There are certain theories of migration and labour welfare which helps the State to frame social security schemes for migrants. The theories that explain international migration are analysed to find out how far these theories are applicable to interstate migration of construction labour. According to

⁷ *Supra pp 21 - 30*

Neoclassical Economics Macro Theory migration is the result of wage difference between nations. The migrant construction workers migrate to Kerala because they get higher wages compared to their home State. Neoclassical Economics Micro Theory states that migration is based on the utilisation of human capital. The workers migrate on the basis of a rational analysis of costs and benefit of migration. The theory is applicable to interstate migration because the skilled construction workers get more wages compared to unskilled workers. The Theory of New Economics of Migration considers the role of social entities like family in taking a decision to migrate. The migrant construction workers have a tendency to return home after saving some money to meet some family expenses. It shows that labour migration is a family strategy to diversify the risks. The Dual Labour Market Theory states that migration is the result of demand of labour in secondary segment of industrialised societies. The native workers are not ready to work in secondary segment where chances of upward mobility are less. The interstate migrant construction workers are often employed in those areas where local workers are not ready to work due to its hazardous nature. World System Theory states that international migration is the result of penetration of capitalists in to non capitalist economy. The interstate migration of construction labour also results from the forces of globalization and the resultant decline in income from traditional occupations, unemployment and under development of home State, influence of mass media, western culture and spirit of individualism etc. The poor workers from the lower social strata has an urge to migrate to urban areas

because they think that they would be free from the social stigma. The Net Work Theory of Migration states that migrant network has an important role in promoting migration. Majority of migrant construction labour come to Kerala through their friends and relatives. It shows that Net Work Theory applies to interstate migration also. The Theory of Cumulative Causation or Perpetuation Theory explains that migration begets more migration. The migration through net work is an instance of cumulative causation of migration. The Institutional Theory suggest that institutions or organizations (profit oriented or not) brings international migration. As far as migration of construction labour is concerned there is no requirement of visa or passport, but the contractors act as a powerful medium to recruit them. Thus it can be seen that the theories of international migration are equally applicable to interstate migration. It can be concluded that construction workers migrate to Kerala for their livelihood and they require social protection on contingencies.⁸

Labour is an asset to the economy of nation. It is essential for the social and economic development. Labour should be utilized properly. If they are not properly treated it will lead to social disturbances. There are some theories that explain the basis of labour welfare. The Police Theory states that employers are selfish in nature and State has the duty to intervene to protect the workers from the greedy and self centered employers. The Religious Theory states that labour welfare measures are introduced because they lead to salvation of human beings who are essentially religious beings. The Philanthropic Theory suggests

⁸ *Supra* pp 39 - 52

that labour welfare measures are the result of the instinct urge of human beings to help others. The Trusteeship Theory states that the State and employers hold the property as trustees for the benefit of their workers. The Placating Theory states that welfare measures are required to pacify the workers and their organisations. According the Public Relations Theory, labour welfare measures are meant to create good public relations and to improve the goodwill of the industry. The Functional Theory suggests that labour welfare measures will help to improve the efficiency of workers. All the above mentioned theories points out that State and the employer has the duty to promote welfare of the workers. Labour welfare includes social security measures. Labour migration is a strategy adopted by the workers to improve their life. Hence the State and employer has the duty to facilitate labour migration.⁹

The components of social security are based on International Convention on Social, Economic and Cultural Rights (ICESCR 1966) and the directive principles of state policy contained in the Constitution of India.¹⁰ The resources of the State are to be distributed in a way to serve the common good. State has the Constitutional obligation to protect the inherent dignity of workers. Workers can lead a dignified life only when they get social security rights. They shall get protection on unforeseen contingencies like unemployment, old age, sickness, maternity, widow hood, invalidity, employment injury, death of the earning member of the family etc. The State has the duty to protect and promote the income and prevent the loss of income.

⁹ *Supra* pp 53 - 57

¹⁰ *Supra* p.58

Employment security and income security have positive effects on productivity of workers. If the workers enjoy guaranteed social security rights they will be ready to take any risks. Thus it can be seen that social security rights are based distributive justice and human dignity.¹¹ The interstate migrant construction worker has the right to social security as an individual and as a worker.

The interstate migrant construction workers are entitled to certain inalienable rights by birth. Social security is a human right. The international community has contributed to the promotion and codification of social security rights through institutions like UNO and ILO. There are various international documents like UDHR (1948), ICCPR (1966), ICESCR (1966), CERD (1966), CEDAW (1979) , etc that recognize right to work and social security.¹² Since the human rights are indivisible and interconnected, protection of social security requires the protection of other human rights also. The civil and political rights like right to equality, freedom from forced labour, freedom of speech and expression, freedom of religion, right to own property, freedom from inhumane and degrading treatment, right to liberty and security of person, right to privacy etc are essential for an interstate migrant construction worker to realise the right to social security.¹³ The interstate migrant construction workers do not enjoy these rights effectively.

The UN Convention on the Rights of Migrant Workers and Members of their Families (ICMW 1990) guarantees the human rights of migrant workers

¹¹ *Supra* p.65

¹² *Supra* p.85

¹³ *Supra* pp 103 – 126 ; Table Nos 3.13 to 3.19

and their families during the entire process of migration.¹⁴ It also imposes certain obligations on the State of origin, State of employment and State of transit. The convention requires equal treatment of migrant workers and others in matters of social security. The Convention protects the regular and irregular migrants, but it confers certain additional rights on regular migrants. However, the social security rights mentioned in ICMW are not adequate to protect the vulnerable migrant population of the present day. The ratification of the Convention is far from satisfactory.

ILO, which is an organ of UNO has the Constitutional obligation to protect the rights of migrants and to promote sound migration. The Declaration on Fundamental Principles and Rights at Work (1998) provides that all the member States of ILO have the obligation to fulfill the core labour rights like freedom of association, freedom from discrimination, freedom from forced labour and freedom from child labour.¹⁵ India being the founder member of ILO has the obligation to implement these rights irrespective of the ratification. These rights are the prerequisite of social security of migrant workers.

ILO has recognised nine branches of social security namely unemployment benefit, sickness benefit, invalidity benefit, employment injury benefit, maternity benefit, family benefit, loss of earning member, medical benefit and old age benefit.¹⁶ There are certain conventions and

¹⁴ *Supra* pp 77 & 78 ; Table No 3.1 & 3.2

¹⁵ *Supra* p.81

¹⁶ *Supra* pp 87 – 103 ; Table Nos 3.4 – 3.12

recommendations drafted by ILO¹⁷ that protect social security rights of migrants namely, Social Security (Minimum Standards) Convention (1952), Equality of Treatment (Social Security) Convention (1962), Maintenance of Social Security Rights Convention (1982), Social Protection Floors Recommendation (2012), Migration for Employment Convention (Revised) (1949), Migration for Employment Recommendation (Revised) (1949), Protection of Migrant Workers (Under Developed Countries) Recommendation (1955), Migrant Workers (Supplementary Provisions) Convention (1975), Migrant Workers Recommendation (1975), Workmen's Compensation (Occupational Diseases) Convention (1934), Working Environment (Air Pollution, Noise and Vibration) Convention (1977), Vocational Rehabilitation and Employment (Disabled Persons) Convention (1983), Unemployment Convention (1919), Termination of Employment Convention (1982), Safety Provisions (Building) Convention (1937), Safety and Health in Construction Convention (1988), Old Age, Invalidity and Sickness Benefit Convention (1967), Occupational Safety and Health Convention (1981), Occupational Health Services Convention (1985), Medical care and Sickness Benefits Convention (1969), Maternity Protection Convention (2000), Holidays with Pay Convention (Revised) (1970), Employment Promotion and Protection against Unemployment Convention (1988), Employment Injury Benefits Convention (1964) etc.¹⁸

¹⁷ *Supra* p. 83

¹⁸ *Supra* pp 128 – 131 ; Table No 3.20 (status of ratification)

The internationally accepted standards of social security are not made available for interstate migrant construction workers in Kerala. The society and the State are not protecting the inherent rights of interstate migrant construction workers that are recognized under human rights documents. The employers and contractors are violating the human rights of migrant workers.

There are certain Constitutional provisions guaranteeing social security and right to work. Constitution of India was enacted to bring about a social revolution.¹⁹ The entire structure of Constitution including the preamble, fundamental rights, directive principles of state policy and fundamental duties reinforces the principle of distributive justice, equality and human dignity. The preamble promises justice, equality, liberty and fraternity. Supreme Court through its various decisions like *Air India Statutory Corporation v United Labour Union*²⁰ has observed that social justice is the device to mitigate the sufferings of the deprived sections of society.

The fundamental rights do not contain any express reference to right to social security. But it contains other basic rights which form the foundation of right to work and right to social security. Right to equality under articles 14 and 15 include the principles of non-discrimination, gender equality, equal pay for equal work and protection from sexual harassment at work place.²¹ When interstate migrant construction workers and local workers are not given equal treatment in respect of wages and working conditions or social security benefit,

¹⁹ *Supra* p.140

²⁰ *Supra* p. 138 ; *AIR 1997 SC 645, 669 (India)*.

²¹ *Supra* pp 142 - 148

it is the violation of right to equality. Article 15 prohibits discrimination on the basis of migrant status. When migrant female workers engaged in the construction sector are discriminated at workplace and subjected to exploitation, principle of gender equality is violated. In *Visakha v State of Rajasthan*²², it was held that sexual harassment at workplace amounts to the violation of right to equality, right to life and human dignity. The principle of equal pay for equal work is not followed among same sex also.

Article 19(1) (c) of the Constitution guarantees freedom of association.²³ But the migrant construction workers could not enjoy the right to collective bargaining due to factors like migrant status, unorganised nature of work, social exclusion and discrimination. Article 19(1) (d) protects freedom of movement and article 19(1) (e) protects the freedom of residence .It imposes an obligation on State to provide free flow of migration. If there are no favourable conditions for interstate labour migration it will amount to violation of articles 19(1) (d) and 19(1) (e).²⁴

The migrant workers could not exercise the freedom of occupation guaranteed under article 19(1) (g) in a meaningful way because they are forced to work under unfavourable conditions. They are devoid of fair wages, adequate rest, social security, health care and good living conditions.²⁵

Article 21 of the Constitution guarantees all those rights that are essential for a migrant worker to lead a dignified life like social security, right

²² *Supra* pp 147 – 148 ; *AIR 1997 SC 3011(India)*

²³ *Supra* pp 148 – 150

²⁴ *Supra* p.152

²⁵ *Supra* p.151

to decent standard of life, right to livelihood, right to health, right to shelter, and right to fresh environment etc. Supreme Court has explained the scope of right to social security in cases like *Consumer Education & Research Centre v. Union of India*²⁶, *CESC Ltd v Subhash Chandra Bose*,²⁷ *LIC of India v Consumer Education & Research Centre*²⁸ etc. The migrant construction workers are working under sub humane conditions. They have no access to health care, guaranteed livelihood, fresh water, hygienic accommodation and social security. It amounts to the contravention of article 21 of Constitution.²⁹

Article 21A of the Constitution guarantees right to education for children up to 14 years. The unfamiliarity with local language, migrant status, poverty, low social background, ignorance of parents etc prejudicially affect the right to education of migrant children.³⁰ Article 24 of the Constitution prohibits child labour in hazardous industries. The child labour (Protection and Regulation) Act (1986) mention construction as a hazardous industry.³¹ When migrant children are employed in construction sector, it is the violation of articles 21 A and 24.

Forced labour and bonded labour violate human dignity and article 23 of the Constitution. In *Peoples Union for Democratic Rights v Union of India*,³² Supreme Court has given an extended meaning to the term “Force”. When interstate migrant construction workers work for less than minimum

²⁶ *Supra* p.162 ; *AIR 1995 SC 922*

²⁷ *Supra* p.162 ; (1992) *1SCC 441, 462 (India)*.

²⁸ *Supra* p.162 (1995) *5 SCC 482 (India)*

²⁹ *Supra* pp 153 - 163

³⁰ *Supra* p.164

³¹ *Supra* p.173

³² *Supra* p. 166 ; *AIR 1982 SC 1473*

wages or under dangerous conditions due to their economic compulsion it amounts to forced labour. Supreme court has expressed its great concern in bonded labour of migrant workers in cases like *Bandhua Mukthi Morcha v Union of India*³³ *Neeraja Chowdhary v State of M.P*³⁴ and observed that nonimplementation of welfare laws amounts to violation of articles 21 and 23 of the Constitution.

The social and economic rights of interstate migrant workers are included in directive principles of state policy. Articles 38, 39, 41, 42, 43 and 47 deal with different aspects of social security. It states that State shall direct its policy towards securing justice, right to work, equal right of men and women to adequate means of livelihood, equal pay for equal work, protection on unemployment, old age, sickness, disablement, protection of health and strength of workers, prevention of exploitation of workers, raising the standard of nutrition, standard of living, improvement of public health, protection of child hood and youth etc.³⁵ The enforcement of directive principles depends on the resources of the State. The non justiciability of directives and the lethargic attitude of State act as great hindrance in the implementation of social security rights of migrants.

Every citizen of India has to observe certain fundamental duties towards the State and others. Article 51A states that everyone has a duty to promote harmony and the spirit of common brotherhood .There shall not be any

³³ *Supra p. 170 ; AIR 1984 SC 802 (India).*

³⁴ *Supra p.172 ; (1984) 3 SCC 243.*

³⁵ *Supra p.178*

practices derogatory to the dignity of women.³⁶ The interstate migrant construction workers are socially excluded and there is no spirit of common brotherhood towards them.

The Inter State Migrant Workmen (Regulation of Employment and Conditions of Services) Act (ISMW 1979) applies to every contractor and principal employer who employs at least five interstate migrant workmen on any day of the preceding 12 months.³⁷ It can be seen that almost all the construction sites in Kerala would come under the application of the Act. The migrant worker shall get equal treatment in respect of working conditions and shall not be paid less than minimum wages. Only a licensed contractor can recruit migrant workers from other States and he has to renew the licence yearly. The licence shall specify the conditions upon which recruitment can be made, the working conditions, number of workers to be employed and so on. The contractor has the duty to provide information about the details of migrant worker employed by him to the authority. He has the obligation to provide a pass book with photograph of the worker as the identity proof, journey allowances, displacement allowances, free medical facilities, accommodation, protective clothing and amenities at workplace.³⁸

The Act imposes certain duties on the principal employer also. Only a registered employer can employ migrant workers under him. If the contractor fails in his duties towards the migrant worker, the principal employer is liable

³⁶ *Supra* p.182

³⁷ *Supra* p.188

³⁸ *Supra* pp 194 - 207

to perform these duties. The employer has to make sure that the contractor has disbursed the wages to the workers.³⁹

In spite of the provisions of the special statute the conditions of the migrant construction workers in Kerala are unsatisfactory. The workers are forced to work under hazardous conditions because of their vulnerability. They do not complain because they fear that they will lose their jobs. The workers are not treated equally with other workers in working conditions. They face grave discrimination at workplace and social life. In *Jose .M.A v Vadavukodu Puthencruz Grama Panchayath and Others*⁴⁰, the High Court of Kerala considered the subhuman living conditions of the migrant workers who were living in a building leased out by the contractor.

The Act defines interstate migrant worker very restrictively so as to include only those workers who have been recruited by a contractor.⁴¹ Hence large numbers of migrant construction workers who come to Kerala otherwise are excluded from the definition. The provisions as to documentations of the workers are not followed strictly. Only a minor punishment is provided for violation of the provisions of the Act. In *Rajan Kudumbathil v Union of India*⁴², it was observed that a welfare State has the duty to ensure the welfare of workers from other States also. The Act contains no provisions on social security of workers on contingencies like unemployment, old age, sickness, invalidity, maternity, death of the migrant worker etc. There are no provisions

³⁹ *Supra* p.208

⁴⁰ *Supra* p.202 ; 2016 (3) KHC 498

⁴¹ *Supra* p.189

⁴² *Supra* p.208 ; WP(C) 15393/2009.

for the welfare of women migrants. The Act do not address the issues like unfamiliarity with language, freedom of association of workers, education of migrant children etc.

The Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act (1996) is a progressive social security legislation for construction workers. The construction work is inherently dangerous. According to the National Commission on Labour (2002), instability in employment and earning is the basic characteristics of construction labour.⁴³ The uncertainty and hazardous nature of construction work requires that there shall be strong measures of social security. State of Kerala is the pioneer to introduce social security scheme for construction workers. The Act provides for the constitution of Building and other Construction Workers Welfare Board and Fund. Building and Other Construction Workers Welfare Cess Act (1996) regulate the collection of cess to the Fund. Every building worker who is between the age of 18 and 60 and who has been engaged in any of the building or construction work for a period of not less than 90 days in the last 12 months can apply for registration as a beneficiary.⁴⁴ The registered beneficiary has to contribute to the Fund till he attains the age of 60 years. Every registered beneficiary is eligible to the benefits provided under the Act like maternity benefit, disability pension, advance for purchase or construction of house, loan for purchase of tools,

⁴³ *Supra* pp 214 - 215

⁴⁴ *Supra* p.219

payment of funeral assistance, payment of death benefit, cash award for children, medical assistance etc.⁴⁵

The Act provides for good working conditions like fair wages, regular payment of wages, fixation of working hours, overtime wages, adequate rest, leave with pay, supply of fresh water, toilet facilities, accommodation, welfare of the female workers, canteen, crèches, free medical checkup at periodic interval and so on. The Act contains detailed provisions for the safety of workers.⁴⁶

It is not easy for an interstate migrant construction worker to fulfill the eligibility criteria for registration as a beneficiary. There shall be proof of 90 days continuous service as a construction worker in the preceding 12 months. The migrant construction workers are not properly documented. They frequently change their employers or workplace. They are not adequately represented in trade unions. They cannot make regular subscription due to their starvation, temporary nature of employment and ignorance of laws. As a result they could not enjoy the benefits of the Welfare Fund.

There are certain general labour legislations like The Employees Compensation Act (1923), The Payment of Wages Act (1936), The Employees State Insurance Act (1948), The Minimum Wages Act (1948), The Employees Provident Fund and other Miscellaneous Provisions Act (1952), The Maternity Benefit Act (1961), The Payment of Bonus Act (1965), The Contract Labour (Regulation and Abolition) Act (1970), The Payment of Gratuity Act (1972),

⁴⁵ *Supra* pp 222 - 224

⁴⁶ *Supra* pp 226 - 231

Bonded Labour System Abolition Act (1976), Equal Remuneration Act (1976) etc to protect the social security rights. The benefits conferred under The Employees State Insurance Act (1948), The Employees Provident Fund and other Miscellaneous Provisions Act (1952), The Maternity Benefit Act (1961), The Payment of Bonus Act (1965), Employees State Insurance Act (1948) and The Payment of Gratuity Act (1972) are limited to organized sector.⁴⁷ The benefits are not available to casual workers like interstate migrant construction workers because those legislations require proper documentation and continuous service.

The Employees Compensation Act (1923) is an important social security legislation for migrant workers. It guarantees survivor benefit, employment injury benefit and sickness benefit. But the workers face some practical difficulties in accessing the benefits under the Act.⁴⁸ The proceedings can commence only when the incident is reported to the authority. In case of death, the relatives find it difficult to travel long distance from their home State to Kerala to continue the proceedings. Sometimes the relatives or friends of the deceased worker could not even transport the dead body to their home State.

Income security is a component of social security. There shall be fair wages and timely payment of wages. The Payment of Wages Act (1936) provides for timely payment of wages and prevents unauthorized deduction of wages.⁴⁹ In practice, wage cutting and wage withholding are common among migrant workers. Their wages are subjected to unauthorized deductions by the

⁴⁷ *Supra* p.235

⁴⁸ *Supra* pp 236 - 240

⁴⁹ *Supra* pp 240 - 241

contractors. When the migrant workers are appointed on a contract basis they are coming under the scope of The Contract Labour (Regulation and Abolition) Act (1970). It imposes a duty on the contractor to fix the wage period, provide amenities and to make regular payment of wages.⁵⁰ Despite the statutory provisions, the workers have to pay huge amount as commission to the contractors. They have to depend on the contractors because the workers are completely ignorant of the working conditions in Kerala. The workers have no bargaining capacity also.

The Minimum Wages Act (1948) provides for fixation of working hours, rest days with wages, overtime wages, minimum wages and its periodic revision.⁵¹ The contractors and employers adopt various measures to circumvent the provisions of the Act like subcontracting, outsourcing etc. The migrant construction workers suffer from long hours of work without overtime payment.

Good working conditions are essential for decent work and social security. Contract Labour (Regulation and Abolition) Act (1970) imposes a duty on the contractor to ensure adequate supply of fresh water, washing facilities, toilets, urinals, canteens, rest rooms, accommodation, crèches, first aid boxes, etc for workers. These provisions are not implemented properly by the contractors.

Bonded Labour System Abolition Act (1976) is important for migrant construction workers because debt bondage is a reason for migration of labour.

⁵⁰ *Supra* pp 243, 244, 246, 247

⁵¹ *Supra* pp 244 - 246

The Act abolishes the system of bonded labour and guarantees the freedom to select ones employment.⁵² The bonded labour deprives the worker of his freedom of choice and freedom of movement. The worker cannot sell his labour at market price. Globalisation and informalisation of labour makes new forms of bondage for migrant construction workers.

The female migrant construction workers not get adequate health care and maternal care which are essential components of social security. She is discriminated in respect of working conditions and subject to various types of abuses. The provisions of Equal Remuneration Act (1976) require that there shall be equal pay for equal work among male and female workers who are doing work of a similar nature.⁵³ The employers and the contractors would make a loose interpretation of the term “Same work or work of a similar nature” and deny the legitimate wages to the female construction workers. Discrimination is practiced among same sexes also.

Thus it can be seen that interstate migrant construction workers are devoid of any kind of unemployment benefit, maternity benefit, sickness benefit, old age benefit, family benefit etc from the general social security legislations.⁵⁴ The survivor benefit and employment injury benefit available from the Employees Compensation Act (1923) is not effective for them. Likewise provisions relating to wages, working conditions and other workplace amenities are not implemented properly. The universal social security account

⁵² *Supra* p. 249

⁵³ *Supra* p. 250

⁵⁴ *Supra* pp 254 – 255 ; Table No.7.1

as envisaged under the Draft Labour Code on Social security (2018) is a welcome step for the portability of social security rights.⁵⁵

There are certain social security schemes implemented by the Central Government which are scheduled under the Unorganised Workers Social security Act (2008). They are applicable for persons living below the poverty line. The Indira Gandhi National Old Age Pension Scheme provides for old age benefit in the form of monthly pension. Janani Suraksha Yojna is a maternal benefit scheme. Aam Admi Bima Yojna provides insurance for accidental death and disability, partial or permanent. There is provision for granting scholarships for children also. Rashtriya Swasthya Bima Yojna (RSBY) provides health insurance and hospitalization. National Family Benefit Scheme provides assistance on the death of the sole bread winner of the family.⁵⁶

The Government of Kerala has introduced various schemes for the interstate migrant workers .Kerala Migrant Workers' Welfare Scheme was introduced in the year 2010.⁵⁷ It is a contributory insurance scheme. It provides survivor benefits, accidental benefits, funeral assistance and educational scholarships for the children. The rate of registration of migrant workers in to the welfare schemes is not satisfactory. Lack of legal awareness and financial illiteracy are the major reasons for poor enrollment of the schemes. The State Literacy Mission had started a programme called Changathi to educate migrant workers. Aawaz is a free health insurance scheme launched in the year 2018.⁵⁸

⁵⁵ *Supra* p.252

⁵⁶ *Supra* p.263

⁵⁷ *Supra* p.267

⁵⁸ *Supra* p.270

It guarantees insurance coverage on death and hospitalization. It has another objective of collecting data of the workers which is a prerequisite for framing welfare measures. Apna Khar is an initiative to provide housing facilities for migrant workers.⁵⁹ The statutory bodies like Human Rights Commissions and Legal Services Authorities do commendable work in the protection of migrant workers.⁶⁰ The local self government authorities have the power to look into the matters of registration, health care, housing, welfare and sanitation of migrant construction workers.⁶¹ But the local authorities are not discharging the Constitutional obligations to protect migrant workers.

An empirical study was conducted on the unorganized construction workers in the district of Ernakulum. The sample consists of 150 male workers and 50 female workers.⁶² The tool used was semi structured questionnaire. Convenient sampling was done. The problems faced by the migrant construction workers in Kerala especially their access to social security benefits was the focus of the study.

A detailed questionnaire was prepared to analyse the nature of migration, reasons for migration, channel of migration, social profile of migrants, living conditions, wages , working conditions, work place amenities, membership in social security schemes, documentation of workers, health care, benefits derived from government, the favourable and unfavourable factors in Kerala etc.

⁵⁹ *Supra* p.271

⁶⁰ *Supra* pp 272, 275

⁶¹ *Supra* p.277

⁶² *Supra* pp 282, 283 ; Table No. 9.1, Graph 9.1

It was found that poverty, unemployment, lesser wages and seasonal nature of occupation forced them to migrate to Kerala. Labour migration is a livelihood strategy of the workers.⁶³ Majority of the migrant workers are illiterate and unaware of their rights. They have no knowledge of local language and custom. It makes them more vulnerable and dependent on the contractors. Large number of workers has migrated to Kerala through the net work of friends and relatives.⁶⁴ The workers are seasonal migrants. They have no intention to settle in Kerala. They make periodic visits to their home States. The temporary nature of the work disentitles them from social security benefits based on continuous service.

Majority of the workers had left their family at their birth place because of the high cost of living in Kerala.⁶⁵ They suffer the severance of family and home place for their survival. Some migrant construction workers live in rented house paying exorbitant rents without any basic facilities. Some workers use a part of the construction site as their shelter. Some migrants occupy the accommodation provided by the contractor. In all the above cases they live in congested rooms. They have no separate kitchen facilities. The toilet facilities are highly inadequate. There is no sufficient supply of water and washing facilities. There is no proper ventilation. There is no mechanism for waste disposal. It is found that their accommodation is subhuman and it will lead to health problems to migrants and the neighbours.⁶⁶

⁶³ *Supra* p. 285 ; Table No 9.2, Graph 9.2

⁶⁴ *Supra* p.288 ; Table No 9.5, Graph 9.5

⁶⁵ *Supra* p.293 ; Table No 9.10, Graph 9.10

⁶⁶ *Supra* pp 299, 302 ; Table Nos 9.15 & 9.17, Graphs 9.15 & 9.17

The workers get higher wages compared to their home State and lesser wages compared to the local workers.⁶⁷ They do not get any overtime wages. They do not get any leave with pay. Their workplace changes frequently. They are not aware of occupational safety. The workplace amenities are not adequate.

The majority of the migrant workers possess election identity card as their only identity proof. They could not exercise their voting rights due to long distance.⁶⁸ They do not possess pass book as prescribed in the ISMW Act. They do not have any membership in the welfare schemes. They never receive any benefits from Government. It shows the poor documentation of migrant workers and poor access to social security schemes.

Majority of the migrant construction workers suffer from allergic diseases and water borne diseases. In case of any illness they have to bear the expenses themselves. Usual practice is to purchase medicines from the nearby shop without any medical consultation. Unfamiliarity with language, expenses for treatment, fear of losing wages for that day, lack of bystanders to take care etc prevents them from getting inpatient treatment. It is found that they get no protection on their health.⁶⁹ They do not get free medical checkup or hospitalization as required under law. The unhygienic lifestyle and absence of occupational safety cause many health issues among migrant construction workers.

⁶⁷ *Supra* p.309

⁶⁸ *Supra* pp 312 – 313 ; Table Nos 9.25 & 9.26, Graphs 9.24 & 9.25

⁶⁹ *Supra* pp 300, 301, 303 ; Table Nos 9.18 & 9.16, Graph 9.16

The women migrants do not get a women friendly atmosphere at their workplace. They face discrimination and lack social security in contingencies like sickness, old age, widow hood, mother hood, unemployment etc.⁷⁰ Unfamiliarity with language, discrimination, social alienation, high cost of living, oppression from contractors and employers, poor accommodation, lack of social protection, poor health care, lack of workplace amenities and long working hours are the major unfavourable factors in Kerala.

SUGGESTIONS

The following are the major suggestions in respect of the amendments towards Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act (1979) (ISMW)

- The Act shall be amended to enlarge the definition of interstate migrant worker. Now only those persons who are recruited by a contractor in one State to be employed in another State come under the definition of interstate migrant workman. A considerable population of migrant workers comes to Kerala through the network of their friends and relatives. The Act shall cover all interstate migrant workers irrespective of their recruitment within its scope.
- The Act must be made women friendly. The Act contains hardly any provision for the welfare of women. Now the number of women migrants is increasing. As such the Act shall incorporate provisions for

⁷⁰ *Supra* pp 304, 308 ; Table Nos 9.19 & 9.22, Graphs 9.18 & 9.21

maternity care, equal pay for equal work, protection from sexual harassment, limitation of working hours, health care, protection on widowhood, vocational training, child care and so on.

- The Act is silent on social security of migrant workers. There shall be provisions for the protection of workers on unemployment, old age, employment injury, invalidity, sickness and death of the worker.
- The Act has no provisions on the rights of migrant children. The Act shall provide for education and rehabilitation of migrant children.
- According to the Act, the contractor has the primary responsibility to provide welfare measures for the migrant workers. The employer shall be made more accountable for the welfare of migrant workers.
- The Act imposes only minor punishments for violation of the provisions. The employers or the contractors prefer to pay the fine and escape from their liability to provide welfare facilities to the migrant workers. There shall be stringent punishments for violating the provisions of licencing of contractors, work place amenities and registration of establishments.
- Language is a barrier to the migrant workers in realizing their rights. Workers Facilitation Centres shall be provided under the Act.
- Absence of proper data of the workers is a major hurdle in providing welfare measures to migrants. Though the Act contains provisions for documentation of workers there is no substantial compliance. Labour inspections shall be made more effective.

- The workers do not get adequate protection while working with dangerous machineries. They have to tolerate excess noise, extreme temperature, dust, pollution etc. at work place. Act shall contained provisions for occupational safety and health.
- There shall be proper Forum to address the grievance of workers. The Act shall contain redressal machinery in which workers can raise their issues.

General Suggestions

- The welfare of migrants is necessary for the growth of the State. State shall not consider the welfare of migrants as a matter that concerns the workers alone. Due to high rate of literacy and emigration, there is a deficit in the unorganized sector labour in Kerala. It is managed by migrant population .So the State shall take active interest in the development of migrant construction workers.
- Due to the factors like migrant status, casual nature of employment, poverty, ignorance, lack of permanent employer-employee relationship, the migrant workers cannot participate in the formal social security schemes based on contribution of workers and employers. Noncontributory schemes shall be introduced for migrant workers.
- There shall be a general Fund for migrant workers like the Welfare Fund under the Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act (1996) which is portable.

- The lack of permanent employer-employee relationship shall not be taken as a defence in nonpayment of contributions by employers. All the employers employing migrant workers shall be required to contribute a particular sum to the general Fund constituted for migrants.
- The local authorities shall be made responsible for the welfare of migrant workers. The Constitution imposes certain functions on local authorities under article 243 of the Constitution. The local authorities can collect data of migrant workers in their locality, ensure suitable accommodation, health care, proper housing and sanitation.
- The social security benefits shall be made portable since they are moving population. They shall get subsidized food through the public distribution system in Kerala. The proposal for portable social security account envisaged under the Draft Labour Code on Social Security (2018) shall be made available for migrant construction workers.
- Financial support to migrant workers will not solve their problems. Their vulnerability is not the result of economic deprivation alone. The economic and social conditions of the worker and his family shall be improved.
- The Government shall provide technical and vocational guidance and training for the development of productive employment. If the construction workers are given proper training their labour mobility will be increased .If there is an upward mobility, their conditions will be improved.

- A sound policy of migration should address the changes in the pattern of migration. The policy of migration will be effective only when it is based on legal norms and rule of law. There shall be rights based approach towards interstate labour migration.
- The migration policy involves complex conflicting issues. The coordination and cooperation between different departments of the State Governments and different States are essential for the proper administration of the migration policy.
- It is not feasible and possible to abolish migration all together. When migration is distress, the chances of exploitation are high. Distress migration can be regulated by development of home places.
- Decline in agricultural and other traditional occupation is a reason for migration. So incentives like credit facilities, irrigation facilities, training programmes etc. shall be made to flourish traditional occupations. It will help to prevent migration in abusive conditions.
- Effective implementation of Mahatma Gandhi National Rural Employment Guarantee Act, Food Safety Act and Right to Education Act will improve the living condition of migrant workers.
- Housing is one of the most important problems faced by migrant workers. Government shall consider the feasibility of providing shelter homes at affordable rents to migrant workers in every district.

Kerala is more advanced than other States in conferring social security rights to unorganized workers. The social security is not a charity but it is the

right of a migrant construction worker and an obligation of the State. A right based approach is essential to ensure the social security rights of migrant workers. The migration of labour shall be based on the legal frame work of human rights, Constitution and labour laws. The Inter State Migrant Workmen (Regulation of Employment and Conditions of Services) Act (ISMW 1979) must be suitably amended to compete with the challenges of social security of migrant construction workers. The State and the society shall recognize the contributions of migrant workers and accept them.

It is worth to conclude the study with the observation of great humanist Justice P.N Bhagavati in National Textile Workers Union v P.R.Ramakrishnan, AIR 1983 SC 75, 83(India)

In fact the owners of capital bear only limited financial risk and otherwise contribute nothing to production while labour contribute a major share of the product. While the former invest only a part of their moneys, the latter invest their sweat and toil, in fact their life itself. They are not mere vendors of toil, they are not a marketable commodity to be purchased by the owners of capital. They supply labour without which capital would be impotent and they are at the least equal partners with capital in the enterprise.

BIBLIOGRAPHY

ARTICLES

- A.A.I.N Wickramasinghe & Wijitapure Wimalaratana, *International Migration and Migration Theories*, 1 SOCIAL AFFAIRS, No.5, 13-32 (Fall 2016).
- A.K. Gupta , Dr. Arora & B.K. Aggarwal, *Sociological Analysis of Migration of Agricultural Labours from Eastern to North Western Region of India*, 123 IJIR, No.4, 429-445 (Apr. 1988).
- Amitabh Kundu, *Migration, Urbanization and Inter Regional Inequality: The Emerging Socio-Political Change* ,21 EPW, No.46, 2005- 2008 (Nov.15, 1986).
- Amrjit Chandan, *Plight of Migrant Labour*,14 EPW, No.17, 755 (Apr. 28, 1979).
- Anibel Ferus Comelo, *Migration and Precariousness, Two Sides of the Contract Labour Coin*, XLIX EPW, No. 36 -45 (Sept. 6, 2014).
- Anita Ghimire & Kabin Maharajan, 4 MIGRATION & DEVELOPMENT, No.1, 90-107 (2015).
- Anju Kohli & Sadhana Kothari,*The Trend and Dimension of Urban Labour Migration in Western India*, 41 IJLE , No.4,755-763 (1998).
- Arpita Banerjee & Saraswati Raju, *Gendered Mobility:Women Migrants and Work in Urban India*, 44 EPW, No.28,115-123 (Jul. 11-17, 2009).
- Ashis Das & Dhananjay Pandey,*Contract Workers in India; Emerging Economic and Social Issues*,40 IJIR, No.2 ,242-265 (Oct.2004).
- Barry R.Chiswick, *Illegal Immigration and Immigration Control*, 2 JOURNAL OF ECONOMIC PERSPECTIVES, No.3, 101-115 (Summer 1988).
- Barry R.Chiswick, *Is The New Immigration Less Skilled Than The Old*, 4 JOURNAL OF LABOUR ECONOMICS, No.2, 171-191 (Apr. 1986).
- Ben Rogaly, *Workers on the Move : Seasonal Migration and Changing Social Relations in Rural India*, 6 GENDER AND DEVELOPMENT (MIGRATION AND MOBILITY), No.1, 21-29 (Mar. 1998).

- Bipasha Baruah, *Women & Globalisation; Challenges and Opportunities facing Construction Workers in Contemporary India*, 20 DEVELOPMENT IN PRACTICE, No.1, 31-44 (Feb.2010).
- Brigitte Granville, *Labouring Abroad*, 59 THE WORLD TODAY, No.2, 15-16 (Jan.2003).
- C.S.Venkata Retnam, *International Labour Standards and India*, 41 IJLE, No.4 993-1002 (1998).
- Catherine Tactaquin, *Migrant Rights Convention*, 9 IUR, FOCUS ON MIGRANT WORKERS, No.4, 3-4 (2002).
- D.Narasimha Reddy, *Challenges of Decent Work in the Globalised World*, 48 IJLE, No.1, 3-18 (2009).
- Daniel Blackburn & Achuthan N. Navamukundan, *Seeking Security in an Unsecure World*, 7 IUR STRUGGLING FOR A SOCIAL WAGE ; FOCUS ON SOCIAL SECURITY, No.4, 12-13 (2000).
- David Moss, Sanjeev Gupta & Vidya Shah, *On the Margins in the City : Adivasi Seasonal Labor Migration in Western India*, 40 EPW, No 28, 3025-3038 (Jul. 9-15, 2005).
- Dev Nathan, *Structure of Working Class in India*, 22, EPW No.18, 799-809 (May 2, 1987).
- Dharam Ghai, *Decent Work : Concept and Indicators*, 142 ILR, No.2 , 113-146 (2003).
- Don Flynn & Elenore Kofman, *Women, Trade and Migration* 12, GENDER AND DEVELOPMENT, No.2, 66-72 (Jul. 2004).
- Donald. K.Anton, *Introductory Note to Protocol 2014 to the Forced Labour Convention 1930(ILO)*, 53 ILM, No.6, 1227-1235(2014).
- Douglas. S. Massey, *Social Structure, Household Strategies and the Cumulative Causation of Migration*, 56 POPULATION INDEX, No.1, 3-26 (Spring 1990).
- Dr.J.Mahalekshmi, *Child Labour in India, Issues and Challenges*, 4 LLJ, 17-24 (Dec. 2014).
- Dr.JeetSingh Mann, *Amplitude of Social Security Protection to Migrant Workers in Globalisation: A Critical Appraisal*, 3 LLJ, 17-28 (Sept.2013).

- Dr.Kalicharan,*International Perspective of Child Labour: Problems and Solutions*,4 LLJ,33-48 (Nov.2012).
- Dr.Nagaseshamma,*Upliftment of Construction Labour Through Social Security Laws*,1LLJ,1-8 (Feb.2014).
- G. Vijay, *Migration, Vulnerability and Insecurity in New Industrial Labour Market*, 40 EPW, No.22/23, 2304-2312 (May 28-Jun.10, 2005).
- G.B. Nath, *Linking International Labour Standards with Trade, Implications for India*, 41 IJLE, No.4, 1005-1012 (1998).
- Gerry Rodgers, *India, the ILO and the Quest for Social Justice Since 1919*, 46 EPW, No 10, 45-52 (Mar. 5-Mar.11, 2011) .
- Gerry Rodgers, *Decent Work as a Development Objective*, 44 IJLE, No.1, 15-26 (2001).
- Guy Standing, *Globalisation : The Eight Crises of Social Protection* , 45 IJLE, No.1,17-46 (2002).
- Guy.S.Goodwin Gill, *International Law and Human Rights ; Trends Concerning International Migrants and Refugees*, 23 IMR SPECIAL ISSUE INTERNATIONAL MIGRATION, AN ASSESSMENT FOR THE 90'S, No.3, 526-546 (Autumn 1989).
- H.E.Sheikha Haya Rashed Al Khalifa, *Chair Persons Summary of the UN General Assembly High Level Dialogue on International Migration and Development*, 40IMR, No.4, 966-972 (Winter 2006).
- Imrana Quadeer & Dunu Roy, *Work, Wealth and Health; Sociology of Workers Health in India*,17 SOCIAL SCIENTIST, No 5/6, 45-92 (May-Jun. 1989).
- IvanWolffers, Irene Fernandez, Sharuna Verghis & Martijn Vink, *Sexual Behaviour and Vulnerabilty of Migrant Workers for HIV Infection*, 49 CULTURE, HEALTH AND SEXUALITY, No.4, 459-473 (Oct.-Dec. 2002).
- J.P. Singh, *Distance Pattern of Rural to Urban Migration in India*, 40 GENUS, No 1\2, 119- 129 (GENNAIO-GIUGNO 1984).
- J.R.Rele, *Trends and Significance of Internal Migration in India*, 31 THE INDIAN JOURNAL OF STATISTICS, SERIES B (1960-2002), No.3/4, 501-508 (Dec. 1969).

- James A.R, Nafziger & Barry.C.Bartelm,*The Migrant Workers Convention: Its Place in Human Rights Law* ,25 IMR.SPECIAL ISSUE : UN INTERNATIONAL CONVENTION ON THE PROTECTION ON THE RIGHTS OF ALL MIGRANT WORKERS AND THE MEMBERS OF THEIR FAMILIES, No.4, 771-799 (Winter 1991).
- Jan Niessen & Patrick.A.Taran, *Using the New Migrant Workers Convention*, 25 IMR.SPECIAL ISSUE : UN INTERNATIONAL CONVENTION ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES, No.41, 859-865 (Winter 1991).
- Jeemol Unni & Uma Rani, *Social Protection for Informal Workers*, 44 IJLE, No.4, 559-561 (2001).
- Jonathan Crush, *The EU-ACP Migration & Development Relationship*, 4 MIGRATION & DEVELOPMENT, Issue 1, 39-54 (2015).
- Juhani Lonroth,*The International Convention on the Rights of All Migrant Workers and Members of Families in the Context of International Migration Policies; An Analysis of 10 Years of Negotiation*, 25 IMR SPECIAL ISSUE:UN INTERNATIONAL CONVENTION ON THE PROTECTION ON THE RIGHTS OF ALL MIGRANT WORKERS AND THE MEMBERS OF THEIR FAMILIES, No.4, 710-736 (Winter 1991).
- Khalid Koser, *Introduction:International Migration and Global Governance*, 16 GLOBAL GOVERNANCE, No 3, 301-305(Jul.-Sept.2010) .
- Kim Van Eyck, *Women Workers and Migrants in the Globalised Public Health Sector: Debate at the 2004 International Labour Conference*, 15 DEVELOPMENT IN PRACTICE, No.5, 701-709 (Aug. 2005).
- L.Misra, *Organising the Unorganised Labour : Myth, Reality and Possibility*, 41 IJLE ,No.1, 53-66 (1998).
- Lakshmidhar Misra,*Can Globalisation and Labour Rights Coexist*, 44 IJLE , No.1, 3-14 (2001).
- Linda.S. Bosniak, *Human Rights, State Sovereignty and Protection of Undocumented Migrants under International Migrant Workers Convention*, 25 IMR SPECIAL ISSUE:UN INTERNATIONAL CONVENTION ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES, No.4 , 737-770 (Winter 1991).
- Louise Waite, *Kerala's Informal Labour Market Interventions From Work to Well Being*, 36 EPW, No.26, 2393-2397 (Jun.30-Jul. 6, 2001).

- M.K.Pandhe, *Wither Trade Union Rights in India*, 7 IUR, DEBATE ; WTO AFTER SEATTLE, FOCUS ON SOUTH ASIA , No.1, 4-5(2000).
- M.P.Subhrmanian & M.R.Hegde, *Migrant Workers in Udipi Taluk*, 32 EPW , No.31, 1953-1954 (Aug. 2-8, 1997).
- M.S.A. Rao, *Some Aspects of Sociology of Migration*, 30 SOCIOLOGICAL BULLETIN, No.1, 21-38 (Mar. 1981).
- M.S.Ramanujam & K.L. Rawal, *Unorganised Workers Welfare; Imperatives & Initiatives*, 46 IJIR, No.1, 16-31 (Jul. 2010).
- M.V.Shobhana Warriar, *Women at Work :Migrant Women in Fish Processing Industry*, 36EPW, No.27, 3554-3562 (Sept. 15-21, 2001).
- M.V. Shobhana Warriar, *Women at Work: Migrant Women in Fish Processing Industry*, 36 EPW, No.27, 3554-3562 (Sept. 15-21, 2001).
- Mac Naughton, Gillian & Diane. F. Frey, *Decent Work for All: A Holistic Human Rights Approach*, 26 Am.U.Int'l L.Rev., No.2, 441-483 (2011).
- Mahendra.K.Premi, *Aspects of Female Migration in India* , 15 EPW, No.5, 714-720 (Apr.12, 1980).
- Martin Ruhs, *Economic Growth and Labour Immigration Policy*, 24 OXFORD REVIEW OF ECONOMIC POLICY, LABOUR MIGRATION IN EUROPE, 403-426 (Autumn 2008).
- Maura Leen, *Human Rights : The Crisis and the Challenge*, 88 AN IRISH QUARTERLY REVIEW, No.350, 216-224 (Summer 1999).
- Michael Hasenau, *ILO Standards on Migrant Workers ; The Fundamentals of UN Convention and its Genesis*, 25 IMR SPECIAL ISSUE: UN INTERNATIONAL CONVENTION ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES, No.4 , 687-697 (Winter 1991).
- Nalini Nayak, *Social Security for Unorganised Workers*, 40 EPW, No.22/23, 2231-2233 (May 28-Jun. 10, 2005).
- Natacha David, *Migration and Globalisation, Focus on Migrant Workers*, 5 IUR, No.4, 3-4 (1998).
- Nicola Piper, *Gendering the Politics of Migration*, 40 IMR GENDER AND MIGRATION REVISITED, No.1, 133-164 (Spring 2008).

- Odeyar. D. Heggade, *International Labour Standards and India, The Case of Women Labour*, 41 IJLE, No.4, 1035-1043(1998).
- Osiris Oviedo, *Labour Rights and Human Rights*, 15 IUR, No.2, 10-11 (2008).
- Paromita Goswami, *A Critique of the Unorganized Workers Social Security Act*, XLIV EPW, No.11, 17 – 18 (Mar.14, 2009).
- Partha Pratim Mitra & Agrim Kaushal, *International Labour Standards in India; Some Key Issues*, 41 IJLE, No.4, 1013-1018(1998).
- Phillip Cole, *Human Rights and the National Interest; Migrants Health Care and Social Justice*, 33 JOURNAL OF MEDICAL ETHICS, No.5, 269-272 (May 2007).
- Piyasiri Wikramasekara, *Globalisation, International Labour Migration and the Rights of Migrant Workers*, 29 THIRD WORLD QUARTERLY, No 7, 1247-1264 (2008).
- Pranab Bardhan, *Challenges for a Minimum Social Democracy in India*, 46 EPW, No. 10, 39-43 (Mar. 5-11, 2011).
- PUDR Team, *Violation of Workers' Right at Common Wealth Games Construction Site*, 44 EPW, No.24, 10-12 (Jun. 13-19, 2009).
- R.K.A. Subrahmania, *Social Protection of the Workers in the Unorganized Sector*, 48 IJIR SPECIAL ISSUE ON UNORGANISED WORKERS, No.3, 460-470 (Jan. 2013).
- Ramesh .C. Dutta, *Public Action, Social Security and Unorganized Sector*, 33 EPW, No.22, L2-L5 (May 30-Jun. 5, 1998).
- Rashmi Sharma, *Gender and International Migration: The Profile of Female Migrants from India*, 39 SOCIAL SCIENTIST, No ¾, 37-63 (Mar.-Apr. 2011).
- Raul Delgado Wise & Humberto Marquez Covarrubias, *Understanding the Relationship Between Migration and Development, Towards a New Theoretical Approach*, 53 THE INTERNATIONAL JOURNAL OF SOCIAL AND CULTURAL PRACTICES, No.3, 85-105 (Winter 2009).
- Ravi Duggal, *Need to Universalize Social Security*, 41 EPW, No. 32, 3495-3497(Aug. 12-18, 2006).

- Ravi Srivastava, *Labour Migration, Inequality and Development Dynamics in India, An Introduction*, 54 IJLE SPECIAL ISSUE ON LABOUR MIGRATION AND DEVELOPMENT DYNAMICS IN INDIA, No.3, 373-385 (Jul.–Sept. 2011).
- Renana Jhabwala, *Social Security for Unorganized Workers*, 33 EPW, No.22, L7-L11 (May 30-Jun. 5, 1998).
- *Report of the Global Commission on International Migration*, 31 POPULATION AND DEVELOPMENT REVIEW, No.4, 787-798 (Dec. 2005).
- S. Srinivasan, *Unorganised Workers Social Security Act (2008), A Critique* 1 LLJ 1-8 (2012).
- S.Mohanan Pillai, *Social Security For Workers in the Unorganised Sector; Experience of Kerala*, 31EPW, No 31, 2098-2107 (Aug.3, 1996).
- S.N. Guha Thakurta, *Employment in the Construction Industry, Does It Have to be so Unstable ?*, 5 EPW, No.12, 521-527(Mar.21,1970).
- S.S.P. Sharma, H.K.Swain & Promod Kumar, *Labour Standards and Poverty in India : Emerging Issues*, 41 IJLE, No.4, 1021-1034 (1998).
- S.Sakthivel & Pinaki Joddar, *Unorganised Workforce in India, Trends, Patterns and Social Security Coverage*, 41 EPW, No.21, 2107-2114 (May 27-Jun. 2, 2006).
- S.Waseem Ahmad & M. Ashraf Ali, *Social Justice and Constitution of India*, 67 THE INDIAN JOURNAL OF POLITICAL SCIENCE, No 4, 767-782 (Oct.-Dec.2006).
- Sadako Ogata, *Mixed Migration : Strategy for Refugees and Economic Migrants*, 17 HARVARD INTERNATIONAL REVIEW, No.2, 30-33 (Spring 1995).
- Sandeep Chachra, *Government Policies and Rural Urban Migration*, 23 INDIAN ANTHROPOLOGIST, No.1, 73-81 (Jun. 1993).
- Sanjeev.K.Gupta, Dinesh.K. Pal, Rajesh Tiwary, Rajesh Garg, Ashish.K. Shrivastava, Radha Sarawagi, Rajkumar Patel, Lokesh Agarwal , Prashanth Gupta & Chandrakant Laharya : *Impact of Janani Suraksha Yojana on Institutional Delivery Rate and Maternal Morbidity and Mortality, An Observational Study in India*, 30 JOURNAL OF HEALTH, POPULATION AND NUTRITION, No.4, 464-471 (Dec. 2012).

- Shanti Nair, *Migrants in a Maelstorm*, 54 THE WORLD TODAY, No 3, 66-68 (Mar.1998).
- Shirley Hune, *Migrant Women in the Context of International Convention on the Protection on the Rights of all Migrant Workers and Members of their Families*, 25 IMR SPECIAL ISSUE : UN INTERNATIONAL CONVENTION ON THE PROTECTION ON THE RIGHTS OF ALL MIGRANT WORKERS AND THE MEMBERS OF THEIR FAMILIES, No.4, 800-817 (Winter 1991).
- Shirly Hune, *Drafting an International Convention on the Protection of the Rights of all Migrant Workers and Families* 19 IMR SPECIAL ISSUE ; CIVIL RIGHTS AND THE SOCIO POLITICAL PATICIPATION OF MIGRANTS 570-615 (Autumn 1985).
- Shiva.S.Halli, James Blanchard, Dayanand.G.Satihah & Stephen Moses, *Migration and HIV Transmission in Rural south India ; An Ethnographic Study*, 9 CULTURE, HEALTH AND SEXUALITY, No.1, 85-94 (Jan.-Feb. 2007).
- Siby Tharakan, *Protecting Migrant Workers*, 37 EPW, No .51, 5080-5081 (Dec.20-27, 2002).
- Smitha Pillai, *Political Exclusion of Domestic Migrant Labourers in Kerala*, 2 JOURNAL OF SOCIAL DISCOURSE, No.2, 121-135 (Apr. 2015–Sept. 2015).
- Sonja Haug, *Migration Net works and Migration Decision Making*, 34 JOURNAL OF ETHNIC AND MIGRATION STUDIES, No.4, 585-605 (May 2008).
- Sucha Singh Gill, *Migration of Labour in India*, 41 IJLE , 617-624 (1998).
- Sundari. S, *Migration as a Livelihood Strategy, A Gender Perspective*, 40 EPW, No.22/23, 2295-2303 (May 28-Jun.10, 2005).
- T.S.Tapola, *Employment in Development ; Connection Between Indian Strategy and ILO Policy Agenda*, 46 EPW, No.10, 62-67 (Mar.5-11, 2011).
- Tanweer Fazal, *Migrant, Home and Politics : Bihari Labourere in the Metroplolis*, 46 INDIAN ANTHROPOLOGIST, SPECIAL ISSUE ON EVERYDAY STATE AND POLITICS, 93-110 (Jul.–Dec. 2016).
- Tayra Mckee, *Organising Migrant Workers*, FORTNIGHT SUPPLIMENT. WHAT TO DO ABOUT RACISM AND THE EXPLOITATION OF MIGRANTS, No.451, 16-17 (Mar. 2007).

- Tristan Brusle, *Choosing a Destination and Work: Migration Strategies of Nepalese Workers in Uttarakhand, Northern India*, 28 MOUNTAIN RESEARCH AND DEVELOPMENT, No.3/4, 240-247 (Aug.-Nov.2008).
- V.M. Rao, D.Rajasekhar & J.Y.Suchitra, *Unorganised Workers Deprivation, Social Security Needs, Policy Implications*, 41 EPW ,No.19,1913-1916 (May13-19,2006).
- V.M.Rao, D.Rajasekhar & J.Y. Suchithra, *Putting the Cart Before a Nonexistent Horse*, 41, EPW, No 32, 3488-3491(Aug.12-18,2006).
- W.R.Bohning, *The ILO and Contemporary International Economic Migration*, 10 IMR, No.2, 147-156 (Summer 1976).
- W.RBohning, *Basic Rights of Temporary Migrant Workers : Law Vs Power* , 8 DEFENCE OF THE ALIEN, 99-110 (1985).

BOOKS

- A.C.L. DAVIES, PERSPECTIVES ON LABOUR LAW (2004).
- A.M.SARMA, INDUSTRIAL JURISPRUDENCE AND LABOUR LEGISLATION (1996).
- A.N.Sadhu & Amarjith Singh, *Socio-Economic Aspect of Labour in India* , in SOCIAL POLICY, LAW AND PROTECTION OF WEAKER SECTIONS OF SOCIETY (D.N.Saraf ed.,1986) .
- A.S.OBERAI, MIGRATION, URBANISATION AND DEVELOPMENT (1987).
- Adalberto Perulli, *Globalization and Social Rights*, in ECONOMIC GLOBALIZATION AND HUMAN RIGHTS (Wolfgang Benedek ,Koen De Feyter& Fabrizio Marrella ed.,2007).
- Adeline Pelletier, *House Hold Remittances, Inequality and Poverty, Evidence From the State of Kerala*, in DYNAMICS OF INDIAN MIGRATION, HISTORICAL AND CURRENT PERSPECTIVES (S.Irudaya Rajan & Marie Percot ed.,2011).
- Alkha. N. Sharma, *Flexibility, Employment and Labour Market Reforms in India* , in GLOBALIZATION AND LABOUR LAWS (Nandini.C.P.ed., 2007).
- AMARTYA SEN, DEVELOPMENT AS FREEDOM (2004)

- ANDRES SOLIMANO, INTERNATIONAL MIGRATION IN THE AGE OF CRISIS AND GLOBALISATION, HISTORICAL AND RECENT EXPERIENCE (2010).
- ANIL KUMAR, LABOUR WELFARE AND SOCIAL SECURITY, AWARENESS IMPLEMENTATION AND UTILITY OF LABOUR LAWS (2003).
- Ann Whitehead, *Children's Agency, Autonomy of Migration*, in WORKSHOP COMPENDIUM OF INTERNAL MIGRATION IN INDIA – INITIATIVE, NATIONAL WORKSHOP ON INTERNAL MIGRATION AND HUMAN DEVELOPMENT IN INDIA, Vol. II (6-7 Dec. 2011).
- Arjun Patel & Kiran Desai, *Rural Migrant Labour and Labour Laws*, in LABOUR LAWS, WORK AND DEVELOPMENT ; ESSAYS IN HONOUR OF P.G.KRISHNAN (Debi.S.Saini ed.,1995).
- ARUP MITRA & MAYUMI MURAYAMA, RURAL TO URBAN MIGRATION : A DISTRICT LEVEL ANALYSIS FOR INDIA, IDE DISCUSSION PAPER No. 137 (2008).
- Asbjorn Eide, *Economic and Social Rights*, in HUMAN RIGHTS ; CONCEPTS AND STANDARDS (Janusz Symonides ed., 2000).
- B.K.SHARMA & VISHWA MITTAR, CHILD LABOUR AND URBAN INFORMAL SECTOR (1990).
- BARRY.R.CHISWICK, THE ECONOMICS OF IMMIGRATION (2005).
- BENOY PETER, VISHNU NARENDRA, GOD'S OWN WORKFORCE UNRAVELING LABOUR MIGRATION TO KERALA (2017).
- BETH A. SIMMONS, MOBILISING FOR HUMAN RIGHTS INTERNATIONAL LAW ON DOMESTIC POLICIES (2009).
- BILL JORDAN & FRANK DUVELL, MIGRATION, THE BOUNDARIES OF EQUALITY AND JUSTICE (2003).
- BRIAN KEELEY, INTERNATIONAL MIGRATION, THE HUMAN FACE OF GLOBALISATION (2010).
- Carl Skutsch, *Migrant Workers*, in HUMAN RIGHTS ENCYCLOPEDIA (James.R. Lewis & Carl Skutsch ed., 2001).
- Chandra Prakash Azad & Bhavana Jha, *Changing Pattern of Employment and Migration among Tribal's Woman and its Socio-Economic Effects – A Case Study of Santhal Pargana of Jharkhand*, in EMPLOYMENT TRENDS AND

DISPARITIES ; SECTORAL, REGIONAL, GENDER AND SOCIAL GROUPS (Aparna Bhardwaj ed., 2014).

- CHRISTIAN TOMUSCHAT, HUMAN RIGHTS BETWEEN IDEALISM AND REALISM (2008).
- DANIEL BERLINER, ANNE REGAN GREENLEAF, MILLILAKE, MARGARET LEVI, & JENNIFER NOVECK, LABOUR STANDARDS IN INTERNATIONAL SUPPLY CHAINS, ALIGNING RIGHTS AND INCENTIVES (2015).
- DHARAM GHAI, DECENT WORK, OBJECTIVES AND STRATEGIES (2006)
- DILIP SAIKIA, VACHASPATI SUKLA & KIRAN KUMAR KAKAR LAPUDI, INDIA'S ECONOMY IN THE GLOBALISED ERA (2013).
- Douglas. S. Massey, Joaquin Arango, Graeme Hugo, Ali Kouaouci, Adela Pellegrino & J.Edward Taylor, *Theories of International Migration, A Review and Appraisal*, in THE MIGRATION READER, EXPLORING POLITICS AND POLICIES (Anthony. M. Messina & Gallya Lahav ed., 2006).
Douglas. S. Massey, Joaquin Arango, Graeme Hugo, Ali Kouaouci, Adela Pellegrino & J.Edward Taylor, *Theories of International Migration, A Review and Appraisal*, in INTERNATIONAL MIGRATION (Andrew Geddes ed., 2011).
- Dr.B.H.Joshi, *Migration Pattern in India*, in ISSUES IN INDIAN ECONOMY (Dr.K.R. Gupta ed., 2002).
- Dr. H .O. AGARWAL, HUMAN RIGHTS (2002).
- Dr. R.G.CHATURVEDI, JUSTICE: NATURAL, SOCIAL, ECONOMIC AND POLITICAL (1990).
- Dr. S.K.KAPOOR, HUMAN RIGHTS UNDER INTERNATIONAL LAW AND INDIAN LAW (2001).
- Dr. S.R. MYNENI, LAW AND POVERTY (2009).
- Dr. Saxena, *Social Justice & Constitution*, in LAW AND CHANGING SOCIETY (Manju Saxena & Harish Chandran ed., 1999).
- Dr. V.N.P. SINHA & Dr. M.D.ATAULLAH, MIGRATION, AN INTERDISCIPLINARY APPROACH (1987).
- Dr. AVTAR SINGH, INTRODUCTION TO LABOUR AND INDUSTRIAL LAWS (2002).

- Dr. B.PRADEEP KUMAR, CONTOURS OF INTERNAL MIGRATION IN INDIA: CERTAIN EXPERIENCES FROM KERALA MPRA PAPER No.80586 (2016).
- Dr. E.M.RAO, INDUSTRIAL JURISPRUDENCE, A CRITICAL COMMENTARY (2015).
- Dr. N.H.GUPTA, SOCIAL SECURITY LEGISLATION FOR LABOUR IN INDIA (1986).
- Dr. N.K .JAYAKUMAR, LECTURES IN JURISPRUDENCE (2010).
- Dr. N.MAHESWARA SWAMY, IMPACT OF ILO STANDARDS ON INDIAN LABOUR LAW (2007).
- Dr. N.R.Madhava Menon, *Social and Economic Rights, Poverty is Greatest Threat, in* HUMAN RIGHTS (Mathew George Chunakara ed., 2000).
- Dr.R.G.CHATURVEDI, JUSTICE : NATURAL, SOCIAL, ECONOMIC AND POLITICAL (1990).
- Dr. S.K.PURI, AN INTRODUCTION TO LABOUR AND INDUSTRIAL LAWS (2005).
- Dr. Sow.J.B.Auradkar, *Human Rights of Women Construction Workers in Maharashtra, in* DIALECTICS AND DYNAMICS OF HUMAN RIGHTS (Dr. Mrs.Annie John ed.,2012).
- DURGA DAS BASU, INTRODUCTION TO THE CONSTITUTION OF INDIA (1995).
- Faruk Sen & Sedef Koray, *Migrant Worker's Rights, in* HUMAN RIGHTS ; CONCEPT AND STANDARDS (Janusz Symonides ed., 2000).
- GARY. S. FIELDS, WORKING HARD, WORKING POOR (2012).
- George Matzner, *International Labour Standards and the Social Dimensions of Open Trading Regimes, in* LABOUR STANDARDS : GLOBAL PRACTICES (M.N.Bhavani ed., 2008).
- GRANVILLE AUSTIN, THE INDIAN CONSTITUTION, CORNER STONE OF A NATION (1966).
- H M SEERVOI, CONSTITUTIONAL LAW OF INDIA (2008).
- H.L. KUMAR, PRACTICAL GUIDE TO CONTRACT LABOUR REGULATION AND ABOLITION ACT & RULES (2006).

- HAROLD DUNNING, TRADE UNION AND MIGRANT WORKERS (1985).
- IAN BROWNLIE & GUY. S. GOODWIN-GILL, BASIC DOCUMENTS ON HUMAN RIGHTS (2002).
- IAN GOLDEN, GEOFFREY CAMERON & MEERA BALARAJAN, EXCEPTIONAL PEOPLE, HOW MIGRATION SHAPED OUR WORLD AND DEFINE OUR FUTURE (2011).
- ILO, APPROACHES TO SOCIAL SECURITY (1942).
- ILO, INTERNATIONAL LABOUR MIGRATION, RIGHTS BASED APPROACH (2010).
- ILO, MULTILATERAL FRAMEWORK ON LABOUR MIGRATION, NONBINDING PRINCIPLES AND GUIDELINES FOR A RIGHTS - BASED APPROACH TO LABOUR MIGRATION (2006).
- Inderjit Singh, *Legislative and Administrative Measures with Special Reference to Interstate Migrant Workmen Act (1979)*, in MIGRANT LABOUR AND RELATED ISSUES (Vidyut Joshi ed.,1987).
- INTER PARLIAMENTARY UNION, ILO AND UN OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, MIGRATION, HUMAN RIGHTS AND GOVERNANCE, HANDBOOK FOR PARLIAMENTARIANS NO.24 (2015).
- IOM, GLOBAL MIGRATION TRENDS, FACT SHEET (2015).
- Isabella Slinkx, *Migrant Rights in UN Human Rights Conventions*, in MIGRATION AND HUMAN RIGHTS, THE UNITED NATIONS CONVENTION ON MIGRANT WORKERS RIGHTS (Ryszard Cholewinski, Paul DeGuchteneire & Antoine Pecoud, ed.,2009).
- Jackie Smith, *Economic Globalisation and Labour Rights; Towards Global Solidarity*, in GLOBALIZATION AND LABOUR LAWS (Nandini. C.P. ed.,2007)
- JAN BREMAN, AT WORK IN THE INFORMAL ECONOMY OF INDIA, A PERSPECTIVE FROM THE BOTTOM UP (2013).
- JAN BREMAN, OF PEASANTS, MIGRANTS AND PAUPERS (1985).
- JAN BREMAN, OUT CAST LABOUR IN ASIA (2010).

- Jaya Ram Panda, *Bonded Labour in a Semi Feudal, Semi Capitalist – Society*, in SOCIAL POLICY, LAW AND PROTECTION (D.N.Saraf ed., 1986).
- Jeremy Eades, *The Political Economy of Migration, Pakistan, Britain and Middle East*, in MIGRANTS, WORKERS AND SOCIAL ORDER (Jeremy Eades ed., 1987).
- Jernej Pikalo, *Economic Globalisation, Globalist Stories of State and Human Rights*, in ECONOMIC GLOBALIZATION AND HUMAN RIGHTS (Wolfgang Benedek, Koen De Feyter & Fabrizio Marrella ed.,2007).
- JeromeJ.Shestack, *The Philosophical Foundation of Human Rights*, in HUMAN RIGHTS ; CONCEPTS AND STANDARDS (Janusz Symonides ed., 2000).
- JOHN RAWLS, A THEORY OF JUSTICE (2005).
- Joya Misra & Sabine. N. Merz, *Neoliberalism, Globalisation and International Division of Care*, in GLOBALIZATION AND LABOUR LAWS (Nandini C.P. ed.,2007).
- JULIUS STONE, SOCIAL DIMENSIONS OF LAW AND JUSTICE (1999).
- JUSTICE R.C. LAHOTI PREAMBLE THE SPIRIT AND BACKBONE OF THE CONSTITUTION OF INDIA(2004)
- Justice K. Ramaswamy, *Interstate Migrant Labour and Human Rights*, in MIGRANT LABOUR AND HUMANRIGHTS IN INDIA (K.Gopal Iyer ed., 2003).
- JUSTICE V.R. KRISHNA IYER, SOCIAL JUSTICE AND THE UNDONE VAST (1991).
- JUSTICE V.R.KRISHNA IYER, UNSPEAKABLE ANECDOTES (2012).
- JUSTICE V.R.KRISHNAIYER , JUSTICE AT CROSS ROADS (1999).
- JUSTICE V.R.KRISHNAIYER, THE INDIAN LAW, DYNAMIC DIMENSIONS OF THE ABSTRACT (2009).
- K .C. ZAKARIAH, E.T. MATHEW & S. IRUDAYA RAJAN, THE DYNAMICS OF MIGRATION IN KERALA, DIMENSIONS, DIFFERENTIALS AND CONSEQUENCES (2003).
- K. Gopal Iyer, *Migrant Labour and Human Rights Violation*, in MIGRANT LABOUR AND HUMAN RIGHTS IN INDIA (K.Gopal Iyer ed., 2003).
- K.MADHAVANPILLAI, LABOUR AND INDUSTRIAL LAWS (2000).

- K.PRATAP, RURAL LABOUR IN INDIA, PROBLEMS AND WELFARE SCHEMES (1992).
- Kay Warren, *The 2000 UN Human Trafficking Protocol ; Rights, Enforcement, Vulnerabilities, in THE PRACTICE OF HUMAN RIGHTS TRAFFICKING LAW BETWEEN THE GLOBAL AND LOCAL* (Mark Goodale & Sally Engle Merry ed., 2007).
- Khalid Koser, *Protecting the Rights of Migrant Workers, in NEW PERSPECTIVES ON INTERNATIONAL MIGRATION AND DEVELOPMENT* (Jeronimo Cortina & Enrique Ochoa Reza ed., 2013).
- Laxmidhar Misra, *Migration, Factors, Policies and Programmes, in MIGRANT LABOUR AND RELATED ISSUES* (Vidyut Joshi ed .,1987).
- LUCIA KUREKOVA, THEORIES OF MIGRATION: CONCEPTUAL REVIEW AND EMPIRICAL TESTING IN THE CONTEXT OF EU EAST-WEST FLOW (2011).
- M. P. JOSEPH, D.NARAYANA & C.S.VENKATESWARAN, DOMESTIC MIGRANT LABOUR IN KERALA (2013).
- M.S.A Rao, *Some Aspects of Sociology of Migration in India, in STUDIES IN MIGRATION, INTERNAL AND INTERNATIONAL MIGRATION IN INDIA* (M.S. A. Rao ed.,1986).
- M.V. MOORTHY, PRINCIPLES OF LABOUR WELFARE (1982).
- Mahendra. P. Singh, *Constitutionalization and Realization of Human Rights in India, in HUMAN RIGHTS, JUSTICE AND CONSTITUTIONAL EMPOWERMENT* (C.Rajkumar.K.Chockalingam ed.,2010).
- MALIK & RAVAL, LAW AND SOCIAL TRANSFORMATION IN INDIA (2017).
- Martin Ruhs & Ha-Joon Chang, *The Ethics of Labour Immigration Policy, in INTERNATIONAL LABOUR MIGRATION* (Andrew Geddes ed.,2011).
- MARTIN RUHS, THE PRICE OF RIGHTS REGULATING INTERNATIONAL LABOUR MIGRATION (2013).
- MEENAKSHI GUPTA, LABOUR WELFARE AND SOCIAL SECURITY IN THE UNORGANISED SECTOR (2007).
- MOHAMMED MUSTAFA & ONKAR SHARMA, CHILD LABOUR IN INDIA, A BITTER TRUTH (1997).

- MONICA CHAWLA, GENDER JUSTICE, WOMEN AND THE LAW IN INDIA (2006).
- N. VAIDYANATHAN, ILO CONVENTIONS AND INDIA (1978).
- N.D. KAPOOR, HANDBOOK OF INDUSTRIAL LAW (2004).
- Nicola Piper, *Economic Migration and the Transnationalization of the Rights of Foreign Workers, A Concept Note*, in GLOBALIZATION AND LABOUR LAWS (Nandini C.P. ed., 2007).
- N.R.Madhava Menon, *Social and Economic Rights, Poverty is Greatest Threat*, in HUMAN RIGHTS (Mathew George Chunakara ed., 2000).
- P.ISHWARA BHAT,LAW AND SOCIAL TRANSFORMATION (2009).
- Patrick. A. Taran, *The Need for a Rights Based Approach to Migration in the Age of Globalisation*, in MIGRATION AND HUMAN RIGHTS ,THE UNITED NATIONS CONVENTION ON MIGRANT WORKERS RIGHTS (Ryszard cholewinski, Paul De Guchteneire, Antoine Pecoud ed.,2009).
- Paul De Guchteneire & Antoine Pecoud, *Introduction : The UN convention on Migrant Worker's Rights* ,in MIGRATION AND HUMAN RIGHTS, THE UNITED NATIONS CONVENTION ON MIGRANT WORKERS RIGHTS (Ryszard Cholewinski, Paul de Guchteneire & Antoine Pecoud ed., 2009).
- PAUL WHITE & ROBERT WOODS, THE GEOGRAPHICAL IMPACT OF MIGRATION (1980).
- PETER R.BAEHR, HUMAN RIGHTS, UNIVERSALITY IN PRACTICE (1999).
- Philip Martin, *Labour Migration and Development Indicators in the Post-2015 Global Development Framework*, in MIGRATION AND THE UNITED NATIONS POST-2015 DEVELOPMENT AGENDA (Frank Laczko & Lars Johan Lonnback ed., 2013)
- Pooja Singh & Vivek Bhadauria,*Human Rights of Migrant Workforce in the Era of Globalisation*, in HUMAN RIGHTS IN THE TWENTIETH CENTURY, CHANGING DIMENSIONS (Gurdip Singh &V.K.Ahuja ed., 2012).
- Pratibha Asudani, *Socio Cultural Implications of Migration*, in HUMAN MIGRATION IN THE INDIAN SUB CONTINENT, COMPLEXITIES, CHALLENGES AND IMPLICATIONS (Vinod. K. Bharadwaj & Nisha Yadav ed., 2013).
- PRATIBHA GOYAL, LABOUR WELFARE AND JOB SATISFACTION (1985).

- PREETA JOSHI, INTERNATIONAL LABOUR ORGANISATION AND ITS IMPACTS ON INDIA (1985).
- PREETI SAMPAT, ECONOMIC GLOBALIZATION TODAY, RESOURCE BOOK (2003).
- Priya Deshingkar & John Farrington, *Circular Migration and Multilocal Livelihood Strategies*, in SOCIAL PROTECTION AND MIGRANT SUPPORT (Priya Deshingkar & John Farrington ed., 2009).
- Priyanka & Priyanka Mathur, *Critical Analysis of Health Challenges to Migrants ; Special Reference to India*, in HUMAN MIGRATION IN THE INDIAN SUB CONTINENT, COMPLEXITIES, CHALLENGES AND IMPLICATIONS (Vinod. K. Bharadwaj & Nisha Yadav ed., 2013).
- PROF. DR. M.V.PYLEE, AN INTRODUCTION TO THE CONSTITUTION OF INDIA (1995).
- PROF.M.P. JAIN, INDIAN CONSTITUTIONAL LAW (2006).
- PROF.S.R.BANSALI, LAW RELATING TO HUMAN RIGHTS IN INTERNATIONAL AND NATIONAL LAWS AND CONSTITUTION (2013).
- R. SIVARETHINA MOHAN, INDUSTRIAL RELATIONS AND LABOUR WELFARE, TEXT AND CASES (2013).
- Rajiv Khandewal, *Creative Practices and Policies for Better Inclusion of Migrant Workers, The Experience of Aajeevika Bureau*, in WORKSHOP COMPENDIUM OF INTERNAL MIGRATION IN INDIA – INITIATIVE, NATIONAL WORKSHOP ON INTERNAL MIGRATION AND HUMAN DEVELOPMENT IN INDIA, Vol. II (6-7 Dec. 2011)
- Ram.B.Bhagat, *Migrant's (Denied) Right to the City*, in WORKSHOP COMPENDIUM OF INTERNAL MIGRATION IN INDIA – INITIATIVE, NATIONAL WORKSHOP ON INTERNAL MIGRATION AND HUMAN DEVELOPMENT IN INDIA, Vol.II (6-7 Dec. 2011).
- RATHIN BANDYOPADHYAY, HUMAN RIGHTS OF NON CITIZENS, LAW AND REALITY (2007).
- Ravi Srivastava, *Internal Migrants and Social Protection in India. The Missing Link*, in WORKSHOP COMPENDIUM OF INTERNAL MIGRATION IN INDIA – INITIATIVE, NATIONAL WORKSHOP ON INTERNAL MIGRATION AND HUMAN DEVELOPMENT IN INDIA, Vol. II (6-7 Dec. 2011).

- RAVI. S. SRIVASTAVA, BONDED LABOUR IN INDIA, ITS INCIDENCE AND PATTERN (2005).
- Renana Jhabwala, *Migrant Workers and Non-governmental Organisations*, in MIGRANT LABOUR AND RELATED ISSUES (Vidyut Joshi ed.,1987).
- Rina Ben Mayor & Andor Skotnes, *Some Reflections on Migration and Identity*, in MIGRATION AND IDENTITY (Rina Ben Mayor & Andor Skotnes ed., 2005).
- ROEL JENNISSEN, MACRO ECONOMIC DETERMINANTS OF INTERNATIONAL MIGRATION IN EUROPE (2004).
- RONALD SKELDON, MIGRATION AND DEVELOPMENT, A GLOBAL PERSPECTIVE (1997).
- Rose Mary, Von Elling Bolaria & B.Sibgh Bolaria, *Immigrants, Migrants and Labour Market Opportunities*, in INTERNATIONAL LABOUR MIGRATION (Rose Mary, Von Elling Bolaria & B.Singh Bolaria ed., 1997).
- RUHS, TEMPORARY FOREIGN WORKER PROGRAMMES : POLICIES, ADVERSE CONSEQUENCES AND THE NEED TO MAKE THEM WORK, PERSPECTIVES ON LABOUR MIGRATION (2003).
- Ryszard Cholewinski, *International Labour Law and the Protection of Migrant Workers ; Revitalising the Agenda in the Era of Globalization*, in GLOBALISATION AND THE FUTURE OF LABOUR LAW (John D.R. Craig & S.Michael Lynk, ed.,2006).
- S. C. SRIVASTAVA, TREATISE ON SOCIAL SECURITY AND LABOUR LAWS (1985).
- S. R.SAMANT, INDUSTRIAL JURISPRUDENCE, A TREATISE ON THE THEORY AND PRACTICE OF INDUSTRIAL LAW WITH SPECIAL REFERENCE TO INDIA (1961).
- S.IRUDAY RAJAN, M.J. VARGHESE & M.S. JAYAKUMAR, DREAMING MOBILITY AND BUYING VULNERABILITY, OVERSEAS RECRUITMENT PRACTICES IN INDIA (2011).
- S.K.BHATIA, STRATEGIC INDUSTRIAL RELATIONS AND LABOUR LAWS (2008).
- S.K.SINGH, BONDED LABOUR AND LAW (1994).
- S.N.TRIPATHY & C.R.DASH, MIGRANT LABOUR IN INDIA (1997).

- Soli.J.Sorabjee, *Rule of Law : Its Ambit and Dimension*, in *RULE OF LAW IN A FREE SOCIETY* (Dr.N.R Madhava Menon ed., 2008).
- STEVE HUGHES & NIGEL HAWOTH, *THE INTERNATIONAL LABOUR ORGANIZATION COMING IN FROM THE COLD* (2011).
- SUSAN. F. MARTIN, *INTERNATIONAL MIGRATION, EVOLVING TRENDS FROM EARLY 20TH CENTURY TO PRESENT* (2014).
- Sushma Yadav, *Local Governance and Equity in Public Service Delivery*, in *LOCAL DEMOCRACY & GOOD GOVERNANCE , FIVE DECADES OF PANCHAYAT RAJ* (Ranbir Singh & Surat Singh ed., 2011).
- T.S.Sankaran, *Social Security for Workers in Unorganized Sector*, in *INFORMAL SECTOR IN INDIA, PERSPECTIVES AND POLICIES* (Amitabhkundu & Alakh. N. Sharma ed., 2001).
- THE HIGH COMMISSIONER OF HUMAN RIGHTS, UN, *THE INTERNATIONAL CONVENTION ON MIGRANT WORKERS AND ITS COMMITTEE, FACT SHEET No.24 (REV.1)* (2005)
- TONY.J.WATSON, *SOCIOLOGY, WORK AND INDUSTRY* (1980).
- UNESCO, *UN CONVENTION ON MIGRANTS RIGHTS, INFORMATION KIT* (2005)
- Upendra Baxi, *Unorganised Labour, Unorganised Law*, in *LABOUR LAW, WORK AND DEVELOPMENT, ESSAYS IN HONOUR OF P.G.KRISHNAN* (Debi.S.Saini ed., 1995).
- V. PARABRAHMA SASTRI, *RIGHT TO LIFE AND PERSONAL LIBERTY (COMMENTARY AND CASE MATERIALS)* (2010).
- V.KRISHNA MOORTHY & P.P.NAIR, *THE WELFARE FUND FOR CONSTRUCTION WORKERS IN TAMIL NADU, ESS PAPER, No.18* (2003).
- V.N. SUKLA, *CONSTITUTION OF INDIA* (2008).
- Vasudha Dhagamwar, *Migrant Labour and the Law*, in *MIGRANT LABOUR AND RELATED ISSUES* (Vidyut Joshi ed.,1987).
- W.A.V.CLARK, *HUMAN MIGRATION* (1986).
- Werner Sengenberger, *International Labour Standards in the Globalised Economy : Obstacles and Opportunities for Achieving Progress*, in

GLOBALISATION AND THE FUTURE OF LABOUR LAWS (John D. R. Craig & S.Michel Lynk ed, 2006).

- WIKTOR OSIATY'NSKI , HUMAN RIGHTS AND THEIR LIMITS (2009).
- Y.G Joshi & Deepak Verma, *Human Rights Violation and Enforcement of Law vis-à-vis Conflicting Interest Groups. A case of Labour Migration from Chhattisgarh*, in HUMAN RIGHTS AND POVERTY IN INDIA, THEORETICAL ISSUES AND EMPIRICAL EVIDENCES (S.N. Chowdhary ed., 2005).
- Y.R. HARAGOPAL REDDY, BONDED LABOUR SYSTEM IN INDIA, CAUSES, PRACTICE, THE LAW (1995).
- Yash Ghai, *Migrant Workers, Markets and the Law*, in GLOBAL HISTORY AND MIGRATION (Wang Gungwu ed., 1997).

CONVENTIONS, RECOMMENDATIONS & DECLARATIONS

- Abolition of Forced Labour Convention (1957)
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Elimination of Discrimination against Women (CEDAW) (1979)
- Convention on the Rights of Persons with Disabilities (2006)
- Convention on the Rights of the Child (CRC) (1989)
- Declaration Concerning the Aims and Purposes of ILO (1944)
- Declaration on Fundamental Principles and Rights at Work (1998)
- Discrimination (Employment & Occupation) Convention (1958)
- Employment Injury Benefits Convention (1964)
- Employment Promotion and Protection against Unemployment Convention (1988)

- Equal Remuneration Convention (1951)
- Equality of Treatment (Accidents Compensation) Convention (1925)
- Equality of Treatment (Social Security) Convention (1962)
- European Convention on the Legal Status of Migrant Workers (1977)
- Forced Labour Convention (1930)
- Freedom of Association and Protection of Right to Organize Convention (1948)
- Holidays with Pay Convention (Revised) (1970)
- International Convention on Civil and Political Rights (ICCPR) (1966)
- International Convention on Economic, Social and Cultural Rights (ICESCR) (1966)
- International Convention on the Elimination of All Forms of Racial Discrimination (1966)
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW) (1990)
- Maintenance of Migrant's Pension Rights Convention (1935)
- Maternity Protection Convention (2000) ILO
- Maternity Protection Convention (Revised) (1952)
- Medical care and Sickness Benefits Convention (1969)
- Medical Care Recommendation (1944)
- Migrant Workers (Supplementary Provisions) Convention (1975)
- Migrant Workers Recommendation (1975)

- Migration for Employment Convention (Revised) (1949)
- Migration for Employment Recommendation (Revised) (1949)
- Minimum Age Convention (1973)
- Occupational Health Services Convention (1985)
- Occupational Safety and Health Convention (1981)
- Old Age, Invalidity and Sickness Benefit Convention (1967)
- Protection of Migrant Workers (Under Developed Countries) Recommendation (1955)
- Right to Organize and Collective Bargaining Convention (1949)
- Safety and Health in Construction Convention (1988)
- Safety Provisions (Building) Convention (1937)
- Slavery Convention (1926)
- Social Protection Floors Recommendation (2012)
- Social Security (Minimum Standards) Convention (1952)
- Supplementary Convention on Abolition of Slavery, Slave Trade and Institutions and Practices Similar to Slavery (1956)
- Termination of Employment Convention (1982) ILO
- Unemployment Convention (1919) ILO
- Universal Declaration of Human Rights (UDHR) (1948)
- Vienna Declaration, World Conference on Human Rights (1993)
- Vocational Rehabilitation and Employment (Disabled Persons) Convention (1983)

- Working Environment (Air Pollution, Noise and Vibration Convention) (1977)
- Workmen's Compensation (Occupational Diseases) Convention (1925)
- World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerances (2001)
- Worst Forms of Child Labour Convention (1999)

GENERAL COMMENTS

- General Comment No. 18 of the Human Rights Committee, on Non Discrimination, HRI/GEN/1/Rev.9 (Vol.I) dated 10/11/1989.
- General Comment No.12 of the Committee on Economic, Social and Cultural Rights, on the Right to Adequate Food, art. 11,E/C.12/1999/5 dated 12/5/1999.
- General Comment No. 13 of Committee on Economic, Social and Cultural Rights, on the Right to Education, art. 13 of the Covenant, E/C.12/1999/10 dated 8/12/1999.
- General Comment No.14 of the Committee on Economic, Social and Cultural Rights, on Substantive Issues arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights, E/C.12/2000/4 dated 11/8/2000.
- General Comment No.16 of the Committee on Economic, Social and Cultural Rights, on art. 3 of International Covenant on Economic, Social and Cultural Rights, E/C.12/2005/4 dated 11/8/2005.
- General comment No. 18 of the U.N Committee on Economic, Social and Cultural Rights , on the Right to Work, art.6 of the International Covenant on Economic, Social and Cultural Rights, E/C.12/GC/18 dated 6/2/2006.
- General Comment No.19 of the Committee on Economic, Social and Cultural Rights, on the Right to Social Security (art. 9), E/C.12/GC.19 dated 4/2/2008.
- General Recommendation No.26 of the Committee on Elimination of Discrimination against Women, on Women Migrant Workers, CEDAW/C/2009/WP.1/R dated 5/12/ 2008.

- General Comment No. 20 of the Committee on Economic, Social and Cultural Rights, on Non-discrimination in Economic, Social and Cultural Rights, art. 2 Para.2 of ICESCR, E/C-12/GC-20 dated 2/7/2009.
- General Comment No.1 of the Committee on Protection of the Rights of all Migrant Workers and Members of their Families, on Migrant Domestic Workers, CMW/C/GC/1 dated 23/2/2011.
- General Comment No.2 of the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, on the Rights of Migrant Workers in an Irregular Situation and Members of their Families, CMW/C/GC/2 dated 28/8/2013.
- General Comment No. 23 of Committee on Economic, Social and Cultural Rights (2016), on the Right to Just and Favourable Conditions of Work, art. 7 of ICESCR),E/C.12/GC 23 dated 27 /4/ 2016.

CONSTITUTIONAL ASSEMBLY DEBATES

- Constitutional Assembly Debates , Volume XI
- Constitutional Assembly Debate s, Volume VII

STATUTES

- Bonded Labour System Abolition Act (1976)
- Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act (1996)
- Building and Other Construction Workers Welfare Cess Act (1996)
- Contract Labour (Regulation and Abolition) Act (1970)
- Employees Compensation Act(1923)
- Employees Provident Fund and other Miscellaneous Provisions Act (1952)
- Employees State Insurance Act (1948)
- Equal Remuneration Act (1976)

- Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act (1979)
- Legal Services Authority Act (1987)
- Mahatma Gandhi National Rural Employment Guarantee Act (2005)
- Maternity Benefit Act (1961)
- Minimum Wages Act(1948)
- Payment of Bonus Act (1965)
- Payment of Gratuity Act (1972)
- Payment of Wages Act(1936)
- Protection of Human Rights Act (1993)
- Unorganised Workers Social security Act (2008)

REPORTS

- ILO, Global Report on Freedom of Association (2008)
- ILO, World Labour Report, Income Security and Social Protection in a Changing World (2000)
- ILO, World Social Protection Report (2014-2015)
- India Development Report (2015)
- India Labour & Employment Report, Workers in the Era of Globalization (2014)
- IOM, World Migration Report, World Migration, Cost and Benefits of International Migration (2005)
- IOM, World Migration Report, Migrant Wellbeing And Development (2013)
- Kerala Economic Review (2016)
- Ministry of Housing and Urban Poverty Alleviation, Report of Working Group on Migration (2017)

- National Commission for Enterprises in the Unorganised Sector, Task Force Report Definitional and Statistical Issues (2007)
- National Commission for Enterprises in the Unorganised Sector, Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector (2007)
- Report of National Commission on Labour (1969)
- Report of National Commission on Rural Labour (1991)
- Report of UN System Task Team to The Secretary-General ,Realizing The Future We Want For All (2012)
- Report of Special Rapporteur on Human Rights of Migrants, Human Rights Council, 11th Session, UN document. A/HRC/11/7 (14 May 2009)
- Report of the Royal Commission on Labour (1931)
- Report of the Second National Commission on Labour (2002)
- Report of the Secretary-General, UN, High-Level Dialogue on International Migration and Development, An Eight-Point Agenda For Action (A/68/190) (2013)
- UNDP, Human Development Report (2015)

WEBSITES

- <http://www.eldis.org/vfile/upload/1/document/0903/Dhaka-CP-2.Pdf>
- <http://www.ide.go.jp/English/Publish/download/Dp/Pdf/137.pdf>
- <http://www.ilo.org/global/topics/decent-work/lang—en/index.htm>
- Migration % 20 human % 20 rights % 20 and % 20 governance, hand % 20 boo % 20 of % 20 parliamentarians % 20 published % 20 by pdf
- [hrmpractice.com/theories of-employee-welfare](http://hrmpractice.com/theories-of-employee-welfare) /&[http://www.scribd.com/doc/86481426/theories -of-lab-welfare](http://www.scribd.com/doc/86481426/theories-of-lab-welfare)
- <http://en.wikipedia.org/wiki/Ernst-Georg-Ravenstein>

- <http://cream.conference-services.net/resources/952/2371/pdf/mecsc2011-0139-paper-pdf>
- <http://www.springer.com/978-3-319-26990>
- [www.un.org/millenniumgoals/pdf/Post-2015-UNTT report.pdf](http://www.un.org/millenniumgoals/pdf/Post-2015-UNTT-report.pdf)
- publications-iom-int/books/world-migration-report-2013
- [publication-iom-int/system/files/pdf/migration-and –the-post 2015-agenda.pdf](http://publication-iom-int/system/files/pdf/migration-and-the-post-2015-agenda.pdf)
- <http://en.wikipedia.org/wiki/international-convention-on-the-Protection-of-the-Rights-of-all-Migrant-Workers>
- www.ohchr.org/EN/Professionalinterest/Pages/CMW.aspx
- <http://unesdoc.unesco.org/images/0014/001435/143557e.pdf.9>
- www.ilo.org/secsoc/areas-of-work/legal-advice/WCMS-205340/lang--en/index.htm
- <http://en.wikipedia.org/wiki/Maintenance-of-Social-Security-Rights-Convention-1982>
- <http://www.ilo.org/global/topics/millennium-development-goals/lang-en/index.htm>
- [www.un.org/en/ga/68/meetings/migration/pdf/migration-8 points-en.pdf](http://www.un.org/en/ga/68/meetings/migration/pdf/migration-8-points-en.pdf)
- www.ilo.org/wcmsp5/groups/public/..ed_protect/--protrav/-migrant/document
- <https://kerala.gov.in/policies>
- <http://nsap.nic.in/guidelines.html>
- <http://india.gov.in/govt/viewscheme.php?schemeid=1835>
- <http://nrhm.gov.in/nrhm-components/rmnch-a/maternal-health/janani-suraksha-yojana>
- <http://nsap.nic.in/guidelines.html>

- <http://www.thehindu.com/todays-paper/tp-national/tp-kerala/welfare-schemes-for-migrant-workes/article160286>
- <https://mpira.ub.uni-muenchen.de/80586>
- <http://economictimes.indiatimes.com/news/politics-and-nation/data-bank-project-for-registration-of-migrant-workers>
- [Indianexpress.com/article/india/kerala-government-to-bring-out-hamari-malayalam-textbook-for migrants-4796259](http://Indianexpress.com/article/india/kerala-government-to-bring-out-hamari-malayalam-textbook-for-migrants-4796259)
- <http://www.newindianexpress.com/states/kerala/2017/nov/29/kerala-state-literacy-mission-to-start-classes-for>
- <http://www.thenewsminute.com/article/Kerala-first-apna-ghar-ready-hostel-house-640-MLW-71557>
- [http://www.kelsa.gov.in/downloads-activities-July –December 2017 pdf](http://www.kelsa.gov.in/downloads-activities-July-December-2017-pdf)

ANNEXURES

Annexure I – Questionnaire

Annexure II - List of Publications

- *Human Rights of Interstate Migrant Workers In India* (65-71) in VIMALA INTERNATIONAL RESEARCH JOURNAL FOR HUMANITIES & SOCIAL SCIENCES Vol : I, Issue : I, December 2013 ISSN 2348-4837.
- *Access to Justice For Migrant Workers* (240-241) in the Proceedings of International Interdisciplinary Seminar on ACCESS TO JUSTICE: TRENDS AND ISSUES organized by DEPARTMENT OF LAW, UNIVERSITY OF KERALA (7-9 January, 2016) ISBN -978-93-5254-564-3.
- *Human Rights of Migrant Workers in The Era of Globalization, The Social and Legal Issues* (44-52) in the Proceedings of the UGC sponsored National Seminar organized by SCHOOL OF LEGAL STUDIES, COCHIN UNIVERSITY OF SCIENCE AND TECHNOLOGY (CUSAT), KOCHI, KERALA on PROTECTION OF MIGRANT WORKERS IN INDIA, LEGAL AND SOCIAL CONCERNS (19-21 January, 2017) ISBN 978-93-80095-89-9

ANNEXURE I**QUESTIONNAIRE**

1. Name

2. Age

3. Sex : Male / Female

4. Home State

5. Reason for migration

6. Literate : Yes No 7. Educational Qualifications : No primary education Primary education Above primary education 8. Visit to your home State : Once in month Once in a year On festival occasions After the completion of work Only on special occasions in family Otherwise

9. Period of stay in Kerala

Days	Months	Years
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

10. Nature of construction work

11. Married or not : Yes No 12. Staying with spouse or children : Yes No

If not staying with spouse/children, the reason for not bringing them in to Kerala.

13. Nature of accommodation :

Provided by Contractor	Otherwise

14. Types of house :

Kacha House	Packa

15. Number of persons staying in your house

16. Separate kitchen facilities : Yes No

17. Toilet if common to all : Yes No

18. If toilet is Hygienic : Yes No

19. Washing facilities : Enough for all Not Enough

20. Drinking water facilities : Well Tap Common

21. Language known : Mother tongue alone

Local language & mother tongue, Hindi

22. Language used : Mother Tongue Local Language Hindi

23. Communication through local language : Yes No

24. Bank Accounts : Yes No

25. If you have no bank accounts, the reasons for not taking bank accounts :-

26. Nature of money transaction : Bank Otherwise

27. Have you got any of the following documents

Passbook under ISM Act Health Card

Election Card Insurance Card

28. Have you exercised your voting rights in the last elections : Yes No

29. Are you a member of any labour association in Kerala : Yes No

30. Are you a member of any Welfare Board : Yes No

If so specify the Board

31. Do you get any benefits from Government : Yes No

If specify.

32. Are you paying subscriptions regularly : Yes No
33. Have you met with an accident during your work : Yes No
34. How did you meet that expenses :
- Your self The employer
- The contractor Insurance benefits
35. Any allergic diseases : Yes No
36. Any frequent diseases : Yes No
37. In case of any illness where will you approach :
- Government Hospitals Private Hospitals
- Medical Shops
38. Did you experience any difficulty in hospitals ? If yes specify :
- Yes No
39. Favourable condition in Kerala for migration.
40. What are the problems faced by you ?
41. Daily wages : Less than 500 More than 500
42. Commission to contractors : Yes No
43. Amount or percentage of wages : Know Don't know
44. Do you get weekly Leave : Yes No
45. Do you get equal treatment with native workers : Yes No
46. Working hours in a day : Less than 8 hrs More than 8 hrs
47. Wages in your State for similar kind of work :
- Less than in Kerala More than in Kerala
48. Number of migrant workers in your work place :
- Less than 10 More than 10

49. Amenities at your work place :

Canteen	Y	N
Urinal	Y	N
Toilet	Y	N
Fresh water	Y	N

50. Problems faced by female workers at work place.

51. Legal Aid :

Satisfactory	Yes	No

Annexure II (1)**HUMAN RIGHTS OF INTER STATE MIGRANT WORKERS IN INDIA**

*VIMALA INTERNATIONAL RESEARCH JOURNAL FOR HUMANITIES &
SOCIAL SCIENCES Vol: I, Issue : I, December 2013* Bhavana A K

Introduction

Human rights are the minimal rights available to all human being by virtue of their birth. They are inherent and inalienable. It is a component of justice. Justice as fairness rests on the assumption of a natural right of all men and women to equality of concern and respect, a right that they possess not by virtue of merit or excellence but simply as a human being with capacity to make plans and give justice¹. Some rights are considered as basic rights which shield the defenseless against at least some of the more devastating and more common threats of life. The basic rights includes the subsistence rights like adequate food, adequate clothing, shelter, minimum health care, right to livelihood and right to work which are required for a reasonable life. They are inherent necessities of a human being.²

But in reality, these basic rights are not available to vulnerable population in the society. The interstate migrant workers constitute one of the most exploited groups in the society. Migrant worker is any person who is engaged in a remunerated activity in a State of which he is not a national³. Now millions of people are working outside their State of origin. They constitute the major workforce in Kerala. There is not a single day when we never come across a migrant worker in Kerala. They are employed in skilled as well as in semi skilled works. Have you ever thought of their human rights? The answer may be in the negative. The society does not care for them. They are exploited by employers as well as middlemen. They are dehumanized in many aspects. The fundamental freedoms and the basic rights are not available to them. They are compelled to leave their home States in search of better conditions of employment and life. But here most of the migrant workers are leading sub humane

¹ See Ronald Dworkin- Taking Rights Seriously, Universal Law Publishing Co-Pvt.Ltd.3rd Indian Edn, page 182

² See Dr. S. R Myneni-Law and Poverty, Allahabad Law Agency, 3rd Edn 2009, page 287

³ Article 2(1) of the U N Convention On The Protection Of The Rights of All Migrant Workers And Members of Their Family (1990)

life. This paper attempts to study the human rights of the migrant workers and the problems faced by them.

Concept of human rights

Human rights are the basic rights which every individual must have against the State or the authorities by virtue of their membership in the human family irrespective of any other considerations. Human rights are inherent in every one of us. They are not conferred by law or State. Human rights are universal in the sense that all people are entitled to human rights anywhere. They are inalienable in the sense that people can not surrender their human rights or the human rights of others. It does not mean that human rights are absolute. They are universal only. The logic of universality entails interdependence of human rights. Everyone is entitled to an order of rights because every other person is entitled to it. Human rights make sense only within the texture of human responsibilities.⁴ The idea of human right is not foreign to our culture⁵. The concept of dharma is nothing but the guarantee of rights. It ensures that the king is not above the law or the God. He is duty bound to respect and protect the basic freedoms of the individuals. The state has a duty to recognize, protect and enforce the human rights.

The international recognition of human rights of migrant workers

The modern history of human rights starts with the adoption of *United Nations Charter* in the year 1945.⁶ The United Nations Organization came in to existence on 24 October 1945 as a response to the human right violations occurred during the two world wars. The Economic and Social council, a specialized agency of UNO has given special responsibility to promote human rights at the international level.

The codification of the human rights was started by the drafting of *Universal Declaration of Human Rights* in the year 1948. It provides that all human beings are born free and in equal dignity and rights, they are endowed with reason and conscience and should act towards one another in a spirit of brotherhood⁷. The Declaration enumerates both political and economic rights. Though the Declaration

⁴ See Upendra Baxi- The Future of Human Rights, Oxford Universal Press, 3rd Edn, page 185

⁵ V .R. KrishnaIyer - The Dialectics and Dynamics of Human Rights in India (Yesterday, Today and Tomorrow), Tagore Lecture Series, Eastern Law House, 2000 pages 114-138

⁶ One of the objectives of United Nations Organization mentioned in the preamble of the Charter is the promotion of human rights. Article 1(3) of the Charter says that UNO has to promote and encourage human rights and fundamental freedoms without any distinction as to race, religion, language or the like

⁷ See Article 1 of the Declaration.

lacks enforcement machinery it is significant in the sense that the world nations agreed that there are some basic rights available to the mankind⁸. The makers of the Indian Constitution were greatly influenced by the provisions of the Declaration.

Karel Vasak proposes that human rights can be classified between three generations. The first generation corresponds to freedom and protects individuals from State power. Second generation rights relate to equality. Third generation rights also known as solidarity rights, are collective rights dealing with the principles of brotherhood⁹.

The two international covenants drafted in the year 1966 which further elaborated the human rights are the civil covenant and the economic covenant.¹⁰ *The International Covenant on Civil and Political Rights 1966* includes the first generation of human rights. These rights are primarily individualistic. It describes many freedoms that are available to workers.¹¹ Article 2 of the covenant says that the State parties shall take effective steps to implement the rights set out in it and shall provide an effective remedy on its violation.

The International Covenant on Economic, Social and Cultural Rights 1966 is very relevant for migrant workers because it elaborates the rights in relation to work more comprehensively than the civil covenant.¹² Article 2 of the convention mandates that the State parties shall take measures for the full realization of the rights set out in the convention and that the rights are available to all persons without discrimination as of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. This covenant describes the second generation of human rights

⁸ The Declaration confers the right to dignity, right to life, liberty and security, protection from slavery and servitude, right to social security and protection in the events like unemployment, sickness, disability, widow hood and old age, right to equality, right to assembly, right to rest and leisure, right to free choice of employment, right to protection of motherhood and child hood, right to just and favorable conditions of work, equal pay for equal work, right to privacy etc, for more details see articles 1 to 29 of the UDHR.

⁹ See www-s-j-c.net accessed on 3-12-2013

¹⁰ The Universal Declaration 1948, the two international covenants of 1966 and two optional protocols constitute the international bill of human rights.

¹¹ The International covenant on Civil and Political rights 1966 elaborates various rights available to migrant workers like freedom from forced labor, right to liberty and equality, right to movement, freedom of residence, freedom of religion, freedom of opinion, right to form association, right to peaceful assembly, and so on

¹² The International Covenant on Economic, Social And Cultural Rights 1966 assures that everyone has the right to work and right to free choice of work. Everyone has the right to fair wages, equal remuneration for equal work, just and favorable conditions of work, safe working conditions, right to form trade unions, right to social security right to health, improvement of environmental hygiene, etc.

The U N Convention on Protection The Rights of The Migrant Workers And The Members of Their Family 1990 is exclusively meant for the international migration. It addresses the rights of migrant workers and their family in the home country as well as in the host country. The convention recognizes and protects the rights that are available to workers who are properly documented.¹³ It imposes duties on States to prevent illegal migration and at the same time it protects the victims of illegal migration. The convention also confers certain benefits to persons who are not in a regular situation. It emphasizes that the migrant workers shall not be discriminated in respect of wages, working conditions, and social security benefits on the basis of their religion, language, race, status, country of origin or the like. They shall be allowed to contact with the diplomatic agents of their country in cases of emergency. There is a committee to monitor the implementation of provisions of the convention. The individuals as well as the member states can file complaints before the committee.

The International Labor Organization which is dedicated to the protection and promotion of the rights of workers has codified number of labor rights that are available to the workers all over the world. ¹⁴ILO has imposed certain basic standards in relation to rights to work and drafted various treaties relating to employment, unemployment, conditions of women and children, minimum wages, maritime labor, industrial health and safety, vocational training, emigration, social security and so on. All member States are bound to follow that core standards.

¹³ They include the rights such as right to take part in decision making process, equality of treatment in matters of employment and social security benefits, freedom of movement and residence, right to temporary absence of stay so as to fulfill their family obligation, right to religion, right to property, right to security and liberty of persons, right against arbitrary expulsion and so on.

¹⁴ ILO was established after the First World War in the year 1919 and was associated with the League of Nations, It became the first specialized agency of UNO in the year 1946.

The areas covered in the core conventions are right to association, equality, and freedom from forced labor and the prevention of child labor.¹⁵ India being a member of International Labor Organization has an obligation to adopt and implement the international labor standards.

We have seen some of the international documents that offer protection to the migrant workers. Apart from that there are many regional conventions that recognize and protect the rights of migrant workers.¹⁶ Since migration is an ever growing phenomenon, international cooperation is essential for solving the evils of migration. The recipient country gets cheap labor while the poor migrant worker gets less than the minimum wages. Welfare of migrant workers is an important concern for the international community.

The right to decent work

Formerly, the activists spoke about the right to work alone. Now the concept is changed to the right to decent work. Work should be more than remunerative. It should lead to value creation or self realization. The International Labor Organization has developed an agenda for the community of work. The decent work agenda is proposed to implement through the four basic strategies of ILO with gender equality as the cross cutting objective. It involves creating jobs, guaranteeing rights at work, extending social protection and promoting social dialogue. It is based on the understanding that work is a source of personal dignity, family stability, peace in the community and economic growth.¹⁷ The work should lead to the development of the worker. Development means the economic and spiritual empowerment. The right to development is an inalienable human right by virtue of which every human person and all people are entitled to participate in, contribute to, and enjoy economic, social cultural and political development in which all human rights and fundamental

¹⁵ See

- 1 Discrimination (Employment & Occupation) Convention 1958
- 2 Equal Remuneration Convention 1951. Article 14 and art 21 of the Constitution guarantee equal remuneration for equal work.
- 3 Freedom of association and the protection of right to organize convention 1948
- 4 The right to organize and collective bargaining convention 1949. Article 19 of the Constitution confer the freedom of association.
- 5 Forced labour convention 1930
- 6 Abolition of forced labour convention 1957. Article 23 of the Constitution confer the freedom from forced labour.
- 7 Minimum age convention 1973. Article 24 of the Constitution prohibits child labour.
- 8 Worst forms of child labour convention 1999

¹⁶ See the European Convention on The Protection of Human Rights And Fundamental Freedoms 1950, The European Social Charter 1961 and The European Convention on The Legal Status of Migrant Workers 1977.

¹⁷ www.ilo.org accessed on 3-12-2013.

freedoms can be realized.¹⁸ Art. 6 of the convention says that all human rights and fundamental freedoms are indivisible and interdependent. The migrant worker has the right to wholesome development. It is based on the holistic approach of human rights. It means that the various human rights are a part and parcel of a single system of rights. It is not possible to protect the right to work ignoring other rights.

Recognition of the rights of migrant workers in India

Migration of labour in India is due to many factors. Usually the landless poor people from the backward areas migrate to other States. The unemployment, uneven development, seasonal nature of agriculture and poverty enhances migration of laborers. Kerala receives lakhs of migrant workers from the north-eastern States. The economy of Kerala gets benefit from the migrant workers because they are ready to work for lesser wages than the resident workers. They are entitled to the protection from the principles of Constitution and other relevant legislations. But their conditions are far from satisfactory. They are subjected to various types of abuses in their work places.

The Constitution of India is the fundamental law of India. It is the law of land. All laws made by the legislature and executive action taken by the Government must be in accordance with the Constitution of India. The chief architect of our Constitution Dr. B. R. Ambedkar was a man of vision, and the constituent assembly was greatly influenced by the western liberal ideas. They also recognized the fundamental freedoms which were cherished by the leaders of our freedom struggle. As a result they drafted the Constitution on the pillars of equality, liberty, fraternity and justice.¹⁹ These ideals are inter connected. Without justice the concept of equality, liberty and fraternity are illusory. If there is no justice there will not be any liberty, equality and fraternity. Justice has three facets- political, social and economic. Without social justice, the Constitution would not be able to secure economic justice to the people. Only through economic and social justice we can achieve political justice.²⁰ The concept of social justice is based on the idea that all men are equal in society.

¹⁸ Article 1 of the Declaration on Right To Development, 1986. This right is also recognized in African Charter on Human Rights, The Arab Charter on Human Rights, Rio Declaration on Environment and Development, 1993 Vienna Declaration and Programme of Action and many other conventions.

¹⁹ See the Preamble of the Constitution. *In re Berubari case, AIR 1960 SC 845* the honorable Supreme court held that the Preamble to the Constitution is the key to open the minds of its makers.

²⁰ See Justice R. C. Lahoti, Preamble, *The Spirit and Back Bone of The Constitution of India* Eastern book company Lucknow first Edn 2004 page 10.

The great scholar, Granville Austin in *Indian Constitution, A Corner Stone of A Nation*, opined that our Constitution is a social document and majority of its provisions are intended to bring about a social revolution in India. It envisions an egalitarian society where everyone gets his due. The ideals of the Constitution are to be realized through the fundamental rights and directive principles of state policy. The fundamental rights are conceived as restriction on state power.²¹ The state cannot make any law that take away or abridges the fundamental rights. If a law is made in contravention of the fundamental rights the judiciary has the power to declare such law null and void. This provision ensures the inviolability of fundamental rights in India. More over the right to enforce the fundamental right through the highest court of India itself is a fundamental right.²² Almost all the rights mentioned in the Universal declaration of human rights 1948 are included in our Constitution. The fundamental rights represents the civil and political rights contained in the International covenant on civil and political rights 1966. The core labor standards fixed by the International Labor Organization found place in the fundamental rights. That means Indian Constitution incorporates all human rights that are meant to workers.

The famous jurist John Rawls in his *Theory of Justice* argues for distributive justice. The provisions relating to equality provide for distributive justice.²³ It prevents discrimination. The migrant workers shall not be discriminated in respect of their wages, rest, working hours, safety measures and social security benefits. The women and children do get special protection in our Constitution. Special provisions can be made for the protection of women and children.²⁴ Gender discrimination is prohibited by the Constitution. If the female workers are not treated equally with similarly situated male workers it is the negation of gender justice.

Freedom of association is an important right of a migrant worker. The collective bargaining is protected in our legal system. The Constitution protect the freedom of association and the right to assembly.²⁵

²¹ See Article 13 of the Constitution of India.

²² See Article 32 of the Constitution of India. Article 8 of the UDHR 1948 provides for an effective remedy for the violation of fundamental rights.

²³ See Article 14 of the Constitution of India. Article 7 of UDHR incorporates the same principle that all men are equal before law and entitled to equal protection of law without any discrimination.

²⁴ See Article 15 of the Constitution of India.

²⁵ See Article 19 of the Constitution of India grants six freedoms .Article 22of ICCPR and article 8 of ICESCR 1966 protects the freedom of association.

Forced labour and Child labour are prohibited and made illegal.²⁶ The final interpreter of the Constitution is the Supreme Court. Article 21 of Constitution²⁷ is given the widest possible meaning and now the term life and liberty in article 21 includes everything that make life complete. The Supreme Court ruled that life means a meaning full life and not mere an animal existence.²⁸ Life should be a dignified life. Article 21 includes the right to livelihood²⁹, right to shelter³⁰, right to clean environment³¹ and equal pay for equal work.³² The State has an absolute duty to protect life and liberty. State has to ensure that this right is exercised in its fairness and absolute degree.³³

The Directive Principles of state policy represents the objectives that are to be kept in mind by the state while making legislations. They are the guidelines for State actions. Article 38 provides that the State shall strive to promote the welfare of the people by securing and protecting a social order in which justice – social, political and economic –shall inform all the institutions of national life. The State shall strive to minimize the inequalities in income and endeavor to eliminate the inequalities in status, facilities and opportunities. The social and economic charter of the directive principles of state policy contain many welfare principles for the workers like just conditions of work, adequate means of livelihood, fair distribution of wealth, equal pay for equal work, protection youth and childhood, maternity care, employment, education, public assistance in case of unemployment, old age, sickness, disablement, workers participation in management and living a wages.³⁴

There is a special statute for the protection of interstate migrant workers in India³⁵. The Act imposes certain duties on the contractor and the principal employer. The Act insists that the migrant workers shall not be paid less than the minimum wages fixed by law and shall not be discriminated in any matter.

²⁶ See Article 23 & 24 of the Constitution of India. Article 8 of ICCPR 1966 and article 4 of the UDHR 1948 follow the same principles

²⁷ Art 21 says that No person shall be deprived of his life and liberty except according to the procedure established by law

²⁸ *Francis corallie Vs Union of India* AIR 1978 SC 597

²⁹ *Olga tellis Vs Bombay Municipal Corporation* AIR 1996 SC 210

³⁰ *Chameli singh Vs State of U. P* (1996)2 SCC 549

³¹ *M C Mehta Vs Union of India*(1986)2 SCC 176

³² *Randhir Singh Vs Union of India*,AIR1982 SC 879

³³ A N Sen, Human Rights, Sri Sai Law Publications,2nd Edn 2005, Page74

³⁴ For details see Art 39 to Art 47 of the Constitution of India

³⁵ The Interstate Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979 The Act provides for the registration of the workers, and licensing of employers and contractors

Conclusion

The traditional concept of the State was that of a police State. The theory of laissez-faire promoted individualism and self help. The philosophy was minimum state control and maximum individual freedom .Now the State is a welfare State. When the bargaining positions of individuals are unequal, the government has to step in. Otherwise the strong will exploit the weak. The employers are very rich and powerful. The migrant workers are vulnerable to all types of abuses. They are vulnerable because of their poverty and ignorance. They are denied of their basic rights such as right to equality, right to health, right to food, right to shelter, and right to dignity, right to form and join association, right to fair wages and right to just conditions of work. They are entitled to human rights recognized by various international documents. There is a special convention by United Nations Organization to address the issues of international migration. Both the aggrieved individual and the State have the locus standi to file complaints as per the convention. The International Labour Organisation performs a commendable work in promoting the human rights of the workers all over the world. Coming to the national scenario, we have a written Constitution based on the concept of social justice. There are many provisions to protect the depressed or the under privileged in our Constitution. The fundamental rights and the directive principles of state policy are intended to bring about an egalitarian society. The workers' rights are included in the fundamental rights and in the directive principles of state policy. All the human rights that are recognized by the international law are included in our national law. There are a plethora of labor laws and a special statute to regulate the conditions of migrant workers. In spite of all these safeguards they are leading a miserable life. They are not documented properly and the welfare measures are not accessible to them. If there is a right, there is a corresponding duty to protect, respect and fulfill that right. If we want to improve the conditions of migrant workers, we have to follow a holistic human right approach. It is not possible to rank the human rights, they are equal and indivisible. We have to improve the system as a whole. The government should formulate a comprehensive policy to improve the conditions of the migrant workers .We have enough legal provisions and problem lies in its poor implementation. The legal provisions should be made more stringent and should be implemented strictly. The attitude of society should change. The society should not be indifferent to the suffering of migrant workers.

Annexure II (2)

HUMAN RIGHTS OF MIGRANT WORKERS IN THE ERA OF GLOBALIZATION-THE SOCIAL AND LEGAL ISSUES, *Proceedings of UGC sponsored National Seminar organized by School of Legal Studies, CUSAT on Protection of Migrant Workers In India, Legal and Social Concerns* Bhavana A K

Introduction

The migrant workers constitute the major workforce in Kerala. They are unorganized and scattered. Their employment is casual and precarious. They are employed in both skilled and unskilled work. Migration is as old as civilization. It existed in one form or in the other. Globalization has increased opportunities. But the development is uneven increasing the inequalities and exploitation. The workers especially the unorganized workers are the victims of globalization because the labour laws are diluted for profit of the business. Due to poor bargaining capacity and acute poverty the workers especially the migrant workers are susceptible to all types of abuses. Due to feminization of migration the number of women migrant workers are increasing. The domestic workers face more problems because of the fact that their workplace are often isolated. They face physical as well as sexual harassment from the employers. Migrant children who accompany their parents or who migrate their own suffer many problems. They have to work in areas not suitable to their age and health. The aged population is another vulnerable category. The host countries are not ready to bear the cost of social security benefits that protect the workers at their old age. This paper makes an attempt to study the legal and social issues faced by the migrant workers in the era of globalization.

Human rights under globalization

Migration becomes objectionable only when it leads to exploitation culminating in human misery and deprivation of the irreducible barest minimum to which every worker as a human being and as a citizen is entitled. It becomes objectionable when human greed, rapacity, and acquisitive instinct overtakes the finer aspects of human character and lead to a situation which may be characterized by the

denial of dignity, justice and inalienable human rights of certain under privileged and downtrodden beings who are in need of most.¹

The migrant workers are exploited because of their poverty due to landlessness and asset lessness. They are coming from the poorest of poor, who are illiterate and ignorant of their rights. Their poverty and ignorance is exploited. The human rights are said to be universal and inalienable. Even then there is an argument that the principle of universality of rights is not tenable. The rights are relative, certain rights which are considered to be of prime importance in developed countries, may not get the same treatment in under developed or and developing countries. This is not because of the denial of right but because of difference in the prioritization of rights. This conflict of interest is most visible in the case of labour rights. The interest of working class and those of entrepreneurs would be in conflict. The State has to make a balancing of these conflicting interests. The workers' rights are protected when the State succeeds in its duty to balance the conflicting interests. Resident workers do face harassment and exploitation, though in a lesser degree than that of migrant workers.

In the age of globalization, liberalization and privatization an increasing number of multinational companies are coming to set up their industries in third world countries like India. There is every possibility that in order to be cost effective, these business concerns may violate the accepted safety norms and take up activities that pollute environment. There is a growing trend in the developed world to shift the pollution intensive industries like thermal power, steel, gasoline, asbestos, paper, pesticides etc to developing states and to force environmental norms in the latter.² Due to less bargaining capacity of poor workers, the State also follows the standards which are more favourable to the industry. The Government disregards certain safety and environmental norms in order to attract foreign investment to boost development. In such a situation, human rights of migrant workers as well as resident workers are not protected. However the condition of local workers is better compared to migrant workers, because the latter face some additional problems.

¹ Lakshmidhar Mishra, Migration: Factors, Policies and Programmes, in Migrant Labour and Human Rights in India (K.Gopal Iyer ed.) (Kanisha Publishers, New Delhi, 2003) 449.

² G.B.Nath, Linking International Labour Standards with Trade, Implications for India, Indian Journal of Labour Economics, Vol. 41, No.4, (1998),1007.

The hollowing of the sovereignty of nation State, the shrinking of political space, the growing inequalities and vast exclusion, the rising unemployment, insecure informal employment, growing working poor, declining earning of the unskilled, destruction of environment and basic human rights are some of the manifestations of the present globalization. National policy is being determined by dominant global interests.³

Human Rights of Migrant Workers

Human Rights are available to all by virtue of their very existence. All the human rights are available to migrant workers. It is not necessary that it should specifically refer to migrant. They are entitled to all rights recognized under Universal Declaration of Human Rights 1948, International Covenant on Civil and Political Rights 1966, International Covenant on Economic, Social and Cultural Rights 1966, Convention on Elimination of Discrimination Against Women 1979, UN Convention on the Protection of the Rights of Migrant workers and Members of Their Families 1990 and so.

International Labour Organisation, the specialized agency of United Nations Organisation is dedicated to the protection of workers and to set international labour standards for workers all over the world. ILO has drafted hundreds of conventions and recommendations. All the rights mentioned under ILO conventions are available to migrant workers in their capacity as a worker. Apart from the general conventions, there are some special conventions addressing to migrant workers. The Declaration of Principles of Rights at Work 1998 provides that there are certain fundamental conventions which are binding on all members of ILO whether or not they have ratified it.⁴ Though the human rights are said to be indivisible, these rights are considered as core labour rights. India being a founder member of ILO is bound to comply with these conventions, though she had not ratified all these conventions.⁵

³ Dr. Jeet Singh Mann, Amplitude of Social Security Protections to Migrant Workers in Globalisation : A Critical Appraisal Labour Law Journal III (2013), 14.

⁴ (a) Forced Labour Convention (1930) And Abolition of Forced Labour Convention (1957) (b) Freedom of Association and Protection of the Right to Organise Convention (1948) And Convention on the Rights to Collective Bargaining (1949) (c) Equal Remuneration Convention (1951) and Discrimination (Employment and Occupation) Recommendation (1958) (d) Minimum Age Convention (1973) And Worst Forms of Child Labour Convention (1999)

⁵ India had not ratified the ILO conventions relating to Freedom of Association and Minimum Age for employment. The non-ratification is not significant as the Indian Constitution contains freedom of association and prohibition from child labour under Art 19 and Art 24 Constitution respectively.

The Declaration 1998, was designed with a view to equip ILO to address the challenges of globalization.

The problems faced by workers during international migration are more complicated because it involves more than one nation. International co-operation is essential to solve the problems of migrants. The source country, country of transit as well as the country of destination is responsible for human rights violation. The source country is benefited by the remittance of migrant workers.⁶ In the case of migration of skilled workers, the source country faces the problem of “brain drain”. But in the long run the source country gets benefit of its citizens working abroad. The country of origin has a duty to ensure that no illegal recruitment takes place in their territory. The workers should get sufficient information about their working conditions, like nature of work, remuneration, leisure, leave, social security benefits and so on before leaving their home state. Usually the recruitment agencies misguide the workers about their working conditions. Only when they reach a place which is completely foreign to them, the workers realize that they have to work under inhumane conditions. This can be avoided if the home state takes care of the process of recruitment.

In the host nation or in the country of employment, the migrant workers are subjected to various types of abuses. Housing presents one of the most common problems. The right to accommodation of a reasonable standard is widely recognized but the migrant workers may be unable to satisfy this need, particularly if he is a temporary migrant. Language is a serious drawback in explaining symptoms to medical practitioners. Industrial accidents are more due to the unfamiliarity with safety rules and procedure, inability to read warning notices etc. The migrant worker has to face the isolation, boredom and other psychological difficulties of his situation without the encouragement and support of his family.⁷

The migrant workers suffer from social exclusion. Even the governments of host country are not ready to give equal treatment for migrant workers. The nations are reluctant to bear the costs for providing social security benefits to migrant

⁶ The migrant workers generally fall in to one of three categories. They may be in regular status with the right to permanent settlement and naturalization. They may be temporary workers in regular status, but required to leave when the contract expire. The third category may be in irregular status and liable to deportation at any time. See International Labour Migration – Right Based Approach (ILO, Geneva 2010), 77.

⁷ Harold Dunning, Trade Union and Migrant Workers (1985), 8-10.

workers. They always give preference to their citizens. Migrant workers are welcomed only because of cheap labour. To ensure full participation of migrant in their societies, host countries have a duty to combat Xenophobia. The fear of outsiders is deeply rooted psychological reflex. It requires an active reorientation of public discussion to reflect the valuable contributions of migrants.⁸

All human rights treaties prohibit discrimination. The basic reason for the harassment of the migrants is the discrimination practiced on them. They are discriminated with regard to wage, working conditions, safety, leisure, leave, rest, health care and social security benefits.⁹ Nearly all countries are affected by international migration, whether are countries of origin, transit or destination or as combination of these. International migration has become an intrinsic feature of globalization, which raises the issue of the protection of the human rights of migrant workers and their families. As outsiders migrants may not master the language of the host State. They may be unfamiliar with its legal system and administration. They can be troubled by the exposure to alien cultural and social practices. This varies greatly according to migrant's specificities. Skilled migrants are better than their low skilled counterparts as migrants belonging to a large and well organized minority should be better supported than isolated migrants. Migrant workers see their vulnerability increased by their labour conditions. Even before reaching destination States, they encounter situations of high vulnerability. Significant number of people lose their lives trying to reach destination countries. Irregular migrants are prone to accept extremely precarious living and working conditions that favour discrimination and exploitation. They constitute a reserve of very flexible and cheap labour and their status makes it difficult for them to have minimum work standards respected. While this could call for increased protection, in reality they encounter even more barriers to the realization of their rights. Smuggling refers to act of having a migrant enter a state without authorization, while trafficking concern not only the displacement, but also the exploitation of trafficked person once in destination country or in the new place of residence. In principle trafficked or smuggled migrants are understood as victims

⁸ Ian Golden, Geoffrey Cameron and Meera Balarajan, *Exceptional People – How Migration Shaped Our World and Will Define Our Future*, (2011), 276-280.

⁹ Arts 43, 45 and 48 of the UN Convention provide for equality of treatment and Art 13 of Interstate Migrant Workers (Regulation of Employment and Conditions of Service) Act (1979) and rules made there under provide for equality of treatment.

rather than law breakers and should therefore benefit from protection. But the distinction between smuggled, trafficked or irregular migrants may be tenuous.¹⁰

Globalization poses serious threat to all workers including migrant workers. The states are more economically interdependent than before. There is free flow of capital, labour, service, investment and workers. Migration increased tremendously because of the desire for better living. The income disparities between different countries are increased due to globalization. There is a wide disparity on wage rates between the migrant sending and receiving country. The poverty in home state persuades people to move. The developed and developing State adopted many techniques including wage cutting and subcontracting to reduce the cost of production. The national workers are unwilling to work at low wages and dangerous conditions and migrants got more opportunity. The deregulation deprives the workers many of their human rights. The richer countries appear to hold all the cards in this process with the result that the poorer countries have nominal bargaining power regarding the treatment of their workers abroad.¹¹ From its inception in 1919, the international labour organization claimed that unregulated cross – border trade and investment flows would depress labour conditions and create hardships for workers.¹²

Women workers

The home based women workers suffer from excessive working hours and low income. The work load consist of not only of household duties – brining up children, cooking and looking after the aged and sick, but also of fetching water and wood, and engaging in some income generating activities within or outside the household to meet cash needs for food, clothing or medicines. The heavy work load causes a serious toll on health and generates excessive stress.¹³

Women workers face the health risk of prolonged standing, bending, over exertion, poor nutrition, exposure to pesticide, chemicals and stringent working conditions which contribute to increased risk of spontaneous abortion or premature

¹⁰ Paul de cughteneire and Antoine Pecoud , Introduction : The UN convention on Migrant Worker's Rights, in Migration and Human Rights – The United Nations Convention on Migrant Worker's Rights edited Ryszard Cholewinski, Paul de Gughteneire and Antoine Pecoud (UNESCO 2009) 2-4,24

¹¹ See Ryszard Cholewinski., Inter National Labour Law and the Protection of Migrant Workers ; Revitalising the agenda in the era of globalization, in Globalisation and the future of Labour Law edited John D.R. Craig and S. Michael Lynk (2006), 409

¹² Werner Sengenberger, International Labour Standards in the globalised economy : Obstacles and Opportunities for achieving progress in Globalization and the future of Labour Law edited John D.R.Craig and S.Michel Lynk (2006), 331

¹³ See Dharm Ghai, Decent work – Objectives and Strategies, (ILO, 2006), 13

delivery, foetal mal formation and growth retardation or even abnormal post natal development. Lack of toilet facilities at work places also causes health problems such as chronic urinary infections. Migrants face greater risk of sexually transmitted diseases and HIV / AIDS. This is because of lack of awareness, particularly among those single migrants who engage sexual behavior without any protective measures.¹⁴

Marriage is one of the reasons for women migration. They are mainly engaged in the informal sector. Poverty, unemployment and survival as also starvation situation are the factors that push women to migration. They are vulnerable and face various kinds of ignominy like sexual harassment, exploitation, discrimination in wages and sufferings for their children.¹⁵

There is a need to devise women friendly employment and work policies. In some countries it is necessary to combat legal cultural barriers to women working outside the home. There is a need to eliminate open or disguised discrimination against women workers in recruitment, remuneration, promotion and training. States and enterprises must seek to adapt working conditions to the specific needs to women workers, including working hours, crèche facilities and maternity leave. The overwhelming need is for measures that will reduce the work burden, improve working conditions and increase productivity and remuneration.¹⁶

Migrant woman are mostly uneducated or less educated than their counter parts. They are unaware of their rights. Most of them are engaged in domestic labour. They are paid less compared to their local counter parts. They are living in crowded room without basic necessities. Many of them are victims of health hazards due to poor nutrition, poor hygiene lack of fresh water and lack of toilet facilities. They suffer political and social exclusion from local peoples. Their vulnerability persuades them to prostitution. The poor uneducated ladies engage in unprotected sex and become susceptible to sexually communicated diseases. Women migrant workers are often directed in to traditional forms of women's work and paid less than men for work of comparable skill levels. They may be more isolated than men migrant workers, when they perform domestic work. In some countries they are required to undergo pregnancy testing and are then subject to termination of employment and

¹⁴ Ram B. Bhagat Internal Migration in India Initiative National Workshop on Internal Migration and Human Development in India – Workshop Compendium ,Vol, (6-7 Dec. 2011)14.

¹⁵ See K. Gopal Iyer, Migrant Labour and Human Rights in India, in Migrant Labour and Human Rights Violation (edited K.Gopal Iyer) (2003), 32-47.

¹⁶ Dharm Ghai, Decent Work Objectives and Strategies (ILO,2006), 13 - 14

deportation if the result is positive. It is in contravention of ILO's Maternity Protection Convention 2000 No.183.¹⁷

Domestic migrant workers, the vast majority of whom are women are among the world's most vulnerable workers. Women are moving from poor to rich countries, leaving their children behind. Few countries like Bangladesh and Pakistan completely ban emigration of low skilled female workers to prevent them from being subjected to the abusive conditions which too frequently existed in domestic work.¹⁸ The migrant domestic workers are paid less or paid delayed. The wages will be withheld till the completion of contract period to prevent them from leaving the job. After completion they may not get full wages. They are bound to depart on being pregnant. Social protection laws are not available to them. Since their jobs are in private premises, labour inspections are not possible. The domestic workers are subjected to physical and sexual harassment. All these practices amount to involuntary servitude.

According to the report of labour commission, over 95% of women workers are in the unorganized sector. These workers vulnerable because their work is insecure, irregular and often unrecognized. They have to balance the work they have to do with their responsibilities for children and home. Since their income is not commensurate with their work, they do not own any assets and so do not have access to social security. ¹⁹Within poor families, it is the woman who owns the least assets and gets the least nutrition, and the girl child who gets the least opportunities for education and advancement in life.²⁰ Paragraph 9.214 of the report refers to an incident of bonded child labour in Tamil Nadu – Sivakasi Match Factories. A woman was reported saying – child in the womb is pledged to the factory, and consumption and maternity loans are obtained on the undertaking that the child horn, girl or boy would work for the factory. A large number of children also work as bonded slave in glass factories. Working children are often found among migrant families. They work at construction sites, sugar factories, brick kilns, mines and plantations where circumstances do not permit parents to leave children at home. Children of migrants form a very large percentage of the non-domestic non monetary child labour force. Girl children accompany their mothers working as part time domestic servants.

¹⁷ ILO, International Labour Migration, Rights based approach (2010) 94-95

¹⁸ Ibid at 97.

¹⁹ Paragraph 9.141 of Second Labour Commission Report, Part.II, Vol. (1) (2002)

²⁰ Second Labour Commission Report, 985 (2002)

Domestic work categorized as non hazardous by the existing laws, can turn hazardous for a child.²¹

The UN Convention on the Protection of Migrant Workers and Members of their Families, 1990

It is the only and one convention of UN that is exclusively meant for migrant workers. It addresses the migrant workers and their families. Migration always affect family members. If the family members are left in the home State they have to face the responsibilities of family. If the family is brought to the place of employment, the family members face the problems of unfamiliarity with languages, culture, and social exclusion and so on. Since the rents are very high, the migrant workers could not afford suitable accommodation for him and family. For irregular workers, and their family, life would be miserable with low wages.

The Convention was adopted by the General Assembly of UN on 18 December 1990 and entered in to force on 2003. According to this Convention, the migrant worker is a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a state of which he is not a national.²² The rights are available to workers and their families without any discrimination on grounds like sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic social origin, nationality, age, economic position, property, marital status, birth or other status”.²³

Part III of the convention enumerates the rights that are available to all migrant workers and their families whether they are documented or not. These rights include Right to leave and enter states, right to life, right to privacy, right to own property, protection from arbitrary deprivation of property, freedom of thought and religion, freedom of expression, right to security of person, protection during trial of criminal cases, protection from confiscation of documents, right against expulsion, freedom from forced labour, right to equality in conditions of work, right to join trade unions, right to social security, right to receive medical care, rights of children to have basic access to education etc.²⁴

Part IV of the convention confers some additional rights on the migrant workers and family members who are in a regular situation. The additional rights are

²¹Paragraph 9.223 of the Second Labour Commission Report (2002)

²² UN Convention (1990), Art. 2

²³ UN Convention (1990), Art 7

²⁴ UN Convention(1990), Art 8 to Art 37

conferred for documented workers with an objective to promote regular migration. The rights includes the provisions for temporary absence, freedom of movement and residence, right to form association, right to participation in decision making, right to equality of treatment, protection in respect of taxes and duties etc.²⁵

The UN convention on Migrant Workers suffers from poor ratification. Even after decades, none of the major immigration countries have ratified the treaty. Till now India has not ratified the treaty. Some of the main reasons for the non-ratification are the breadth and complexity, the technical and financial obligations it places on the State etc. It contradicts or adds no value to existing national legislation. It provides migrants especially with irregular status, rights that are not found in other human rights treaties, and it generally disallows the differentiation between regular and irregular migrants. Lack of capacity resources and sufficient infrastructure of monitoring are another realities faced in the implementation of treaties.²⁶

The UN Convention expands on human rights only partly covered by other treaties. Art.1 also provides for broader grounds for discrimination than those usually listed in UDHR or elaborated upon in subsequent conventions. The Convention also covers categories of migrant workers and self employed workers who are not covered by the major ILO Conventions. Art.25 is particularly meaningful as it guarantees, under the principle of equality of treatment, that some rights cannot be refused by employers by reason of any irregularity in the stay or employment of migrant. The Convention is the only one treaty consolidating a number of labour rights and applying them to migrant workers in its articles 25, 43, 45, 49, 51, 52, 53 and 55.²⁷

The Interstate Migrant Workmen (Regulation of Employment and Conditions of Services) Act 1979

The Indian Constitution is based on the principle of social justice. The preamble, fundamental rights and the directive principles of state policy protect various aspects of labour rights. The right to equality, freedom from discrimination, freedom from forced labour and right to a dignified life are guaranteed to the migrants through the fundamental rights. The directive principles of state policy confer

²⁵ UN Convention(1990), Art 38 to 57

²⁶ Khalid Koser, Protecting Rights of Migrant Workers, in New Perspective on International Migration and Development,(Jeronimo Cortina and Enrique O Choa Reza, ed 2013),97.

²⁷ Isabelle Slinckx, Migrants Rights in UN Human Rights Convention” ed. Ryszard Cholewinski, Paul De Guchteneire, Antoine Pecoud, Migration and Human Rights, The United Nations Convention on Migrant Workers Rights (2009), 147.

guidelines for better working conditions. All the labour legislations are applicable to migrant workers.

The Interstate Migrant Workmen (Regulation of Employment and Conditions of Services) Act 1979 is the special legislation for the protection of the rights of interstate migrant workers in India. All other existing labour legislations are available to protection of migrants. But this Act was passed because government thought that the existing legislations are inadequate to protect the rights of migrants. Central government passed Rules in the year 1980 and the Kerala passed Rules in the year 1983. The Act imposes certain obligation on the principal employer and contractor and confers certain rights on the migrant workers.

According to the Act interstate migrant work man is 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.²⁸

Section 13 says that the migrant workers shall not be discriminated in respect of wage rates, holidays, hours of work and other conditions. The contractor has a duty to provide free medical facilities, protective clothing, suitable accommodation, suitable working conditions, regular payment of wages, etc.²⁹ The wage shall not be less than minimum wages and shall be paid in cash. The Interstate Migrant Work Men Act 1979 was passed at a time when the problems arose out of migration was not severe as today. The Act is not effective to address the challenges faced by the worker today.

Conclusion

The social and legal issues that are being faced by migrants can be addressed only through a right based approach towards migration. Migration is a historical fact. It cannot be abolished or prohibited. Because every human being has an urge to achieve better standards of life. Constitution provides and protects the right of freedom of movement and profession. The ILO Multilateral Frame work on Labour Migration 2000 has identified the following elements of a rights based approach to labour migration Ensuring coherence between labour migration, decent work,

²⁸ S. 2 of The Interstate Migrant Workmen (Regulation of Employment and Conditions of Services) Act (1979)

²⁹ S. 16 of The Interstate Migrant Workmen (Regulation of Employment and Conditions of Services) Act (1979)

employment and other national policies. (b) Formulating and implementing labour migration policies guided by international labour standards and other relevant international instruments and multilateral agreements concerning migrant workers. (c) Addressing specific vulnerabilities faced by certain groups of migrant workers, including workers in irregular status. (d) Ensuring that labour migration policies are gender sensitive.

The law of international labour migration is based on State sovereignty. There is a human right to enter and leave one's own country, but there is no corresponding right to enter in to a foreign country. All the international conventions respect the sovereignty of independent states. Nations can restrict the rights of migrants in order to secure their security and defence. All the rights that are available citizens may not be granted to migrants. The State can impose restrictions. What is prohibited is the exploitation on the basis of their migrant status. They should not be treated as mere commodities. They are also human beings endowed with right to dignity as a person.

The legal and social issues faced by the migrant workers are increasing the era of globalization. The interstate as well as international migrant workers are vulnerable to all types of harassment. The women migrant workers and child migrant workers are the victims of sexual harassment and human trafficking. The international movements to protect the labour rights are praise worthy. There is a committee established under UN Convention 1990 to investigate in to complaints on violation of treaty provisions. The UN special Rapporteur on Human Rights of Migrant Workers as well as I LO is closely monitoring the international labour standards. The international labour standards are available to interstate migrant workers in Kerala also. They are entitled to protection of constitutional and statutory provisions. Lack of required political will, lack of support from society, non-awareness of rights, improper implementation of labour laws and poor economic development are the major reasons for the pathetic life of migrant workers in the globalised society.