

# URBAN INDIA



National Institute of Urban Affairs,  
1st Floor, Core-4B, India Habitat Centre  
Lodhi Road, New Delhi-110003  
Phone: 24617543, Fax: 011-24617513  
Email: [msethi@niua.org](mailto:msethi@niua.org)  
Cc: [journals@niua.org](mailto:journals@niua.org)

Volume 34 Issue I

URBAN INDIA

January - June 2014

# URBAN INDIA

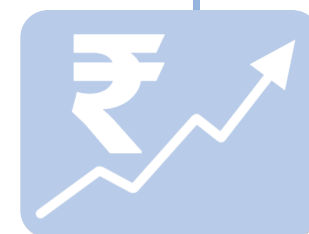


Volume 34 Issue I January-June 2014 ISSN 0970-9045

A Journal of the  
National Institute of Urban Affairs

## Special Issue on Migration

Overview of Migration  
Seasonal Migration  
Gendered Migration  
Migrant Child Labour  
Job Search and Labour Market Outcomes  
Migration and Conflict  
Legal Aspects of Migration  
Book Reviews  
Workshops





Editor-in-charge

Debolina Kundu

Associate Guest Editor

Mukta Naik

(Centre for Policy Research)

### National Institute of Urban Affairs

The National Institute of Urban Affairs is a premier institute for research, capacity building and dissemination of knowledge for the urban sector in India. NIUA conducts research on urbanization, urban policy and planning, municipal finance and governance, land economics, transit oriented development, urban livelihoods, environment and climate change and smart cities.

The Institute supports policy formulation, programme appraisal and monitoring for the Ministry of Urban Development and other Ministries and Departments of the Government of India and also undertakes research and capacity building projects with multilateral and bilateral agencies and private sector organizations.

The Urban Data Centre at NIUA promotes research and evidence based planning and management of the urban sector in India.

NIUA publishes Urban India, a bi-annual journal and maintains the India Urban Portal, which provides information on models and good practices created under the Jawaharlal Nehru National Urban Renewal Mission.

## CALL FOR PAPERS

URBAN INDIA invites contributions on issues related to urban development, management and governance including urbanisation, poverty, environment, municipal finance, e-governance among others.

Papers sent for publication should not have been published earlier or simultaneously submitted for publication to another journal.

### Guidelines for submission of manuscripts:

- Articles should not exceed 8000 words, including notes and references.
- Articles should be accompanied by an abstract of a maximum of 150-200 words.
- Research notes or book reviews must be not more than 4000 words.
- Graphs and charts need to be prepared in MS Office (Word/Excel) and not in jpeg or other formats.
- Full citation for all references and sources must be provided.
- Articles should be sent by email in MS Word format to the Editor, Urban India along with the declaration that the article is unpublished.
- Authors are requested to provide full details for correspondence (postal and email address).

### Address for Communication:

National Institute of Urban Affairs  
1st Floor, Core-4B, India Habitat Centre  
Lodhi Road, New Delhi-110003  
Phone: 24617543, Fax: 011-24617513,  
Email: [msethi@niua.org](mailto:msethi@niua.org)  
Cc: [journals@niua.org](mailto:journals@niua.org)



# URBAN INDIA

Volume 34	Issue I	January-June 2014	ISSN 0970-9045
-----------	---------	-------------------	----------------

**Preface** ..... iii

**Editorial** ..... iv

**Acknowledgements** ..... x

**Internal Migration in India: Setting the Context**

S Chandrasekhar and Poornima Dore ..... 1

*Drivers and Impacts of Migration*

**Linking Separate Worlds: Understanding the Process of Rural-urban Seasonal Migration in India**

Yogesh Kumar and Anamika Ajay ..... 9

**Migration Study Report of Gaisilat Block of Bargarh District of Odisha**

Kanhu Charan Majhi, Abhaya Chandra Tripathi, Jadumani Pradhan ..... 33

*Labour Market in Cities*

**Job Search and Labour Market Conditions of Migrants at the Destination: The Case of Lucknow**

Probir Bose and Ramjee Rai ..... 47

**Well-being of Migrant Workers: Perspectives from Daily Labour Markets in Navi Mumbai**

Karthikeya Naraparaju ..... 68

**Migration and Conflict in the Mega City: A Study of Migrants in Hyderabad**

Triveni Goswami Vernal, Bagmi Priyadarshini, Sayed Nayeem, P. Raghavendra ..... 87

**The Socio-economic Status of Migrant Construction Workers in Bangalore and Intervention Plan to Improve Their Livelihoods**

Smita Premchander, V. Prameela, Shammeeem Banu, K.G. Meenakshi, Hosalli Manjunath, T. Prema ..... 112

**Migration in the Slums of Kolkata: A Gendered Perspective**

Arpita Banerjee ..... 134



## *Legal Protection for Migrant Workers*

### **Child Labour in Cotton Seed Production:**

#### **A Case of Cotton Seed Farms in North Gujarat**

Ashok Khandelwal, Sudhir Katiyar, Madan Vaishnav ..... 157

### **Policies to Safeguard Migrants' Rights: A Critical Approach**

Debolina Kundu ..... 184

### **Legal Primer: Child Labour**

Ashok Khandelwal, Sudhir Katiyar, Madan Vaishnav ..... 213

### **Legal Primer: Brick Kiln Workers and Bonded Labour**

Action Aid, Hyderabad ..... 220

## **Book Reviews**

### **'Urbanization in India-Challenges, Opportunities and the Way Forward'**

**Edited by Isher Judge Ahluwalia, Ravi Kanbur and P. K. Mohanty,**

**Published by Sage Publications, New Delhi.**

Chetan Vaidya ..... 228

### **'Perspective in Urban Development: Issues in Infrastructure, Planning and Governance'**

**Edited by Ramanath Jha and Jyoti Chandiramani,**

**Published by Capital Publishing Company, New Delhi**

Pragya Sharma ..... 232

### **'India: The Urban Transition - A Case Study of Development Urbanism'**

**by Henrik Valeur, Published by Architectura and Natura,**

**Book Sellers and Publishers, Amsterdam**

Mukta Naik ..... 235

**Workshops..... 240**



## LEGAL PRIMER: CHILD LABOUR IN COTTONSEED FARMING

**Ashok Khandelwal, Sudhir Katiyar and Madan Vaishnav**

*Dakshini Rajasthan Mazdoor Union (Dungarpur)*

Two aspects of labour have prominently come out through the report<sup>1</sup>. One, a sizable number of workers is young. About one-third is up to 14 years of age. Second, the wages are low and working and living conditions are tough. In this section we shall examine the ground reality vis-à-vis the legal framework within the country as well as ILO labour standards. In particular, we shall discuss the conditions of employment in relation to the provisions of four of the national laws, namely, Child Labour (Prohibition and Regulation) Act, 1986, Minimum Wages Act, 1948, Interstate Migrant Workers (Condition of Service and Regulation of Employment) Act, 1979 and Bonded Labour (Abolition) Act, 1976 and international instruments in ILO Convention 138 on Minimum Age and 182 on the worst forms of child labour. Because the Government of India has not ratified the ILO Conventions<sup>2</sup>, there is no corresponding legal framework available in the country to implement its provisions. However, we deem it necessary to discuss the provisions of this convention particularly owing to the involvement of multinational companies the production of cottonseeds.

### **(a) Child Labour (Prohibition and Regulation) Act, 1986 (CLA)**

As we noted above, about one-third of the labour force in the Bt cottonseed industry comprises of children less than fourteen years of age. The employment conditions of this age group of workers are regulated by the CLA. In the first place we would like to state that farm work, including work related to cotton seed production that is our current reference point, is regulated but not prohibited u/s 3 of the Act. Therefore the hiring of child labour that is the children up to the age of 14 is not illegal. The CLA also does not specify any minimum wage for work. Thus a five or seven year old can work on farm as a wage worker.

<sup>1</sup> The paper is also part of this issue of the journal, titled 'Child Labour in Cotton Seed Production: A Case of Cottonseed Farms in North Gujarat'

<sup>2</sup> A complete list of conventions not ratified by India is available at <http://www.ilo.org>



However, Part III of the Act (containing sections 6 to 13) that spells out the provisions with regard to regulation of conditions of work of children is relevant. The most important sections are Section 7 relating to hours and period of work; Section 8 regarding Weekly holiday; Section 9 regarding Notice to Inspectors; Section 10 about Disputes as to age; Section 11 on Maintenance of register; Section 12 about Display of notice and finally, Section 13 on Health and safety aspects. If we compare the provisions of the concerned labour law with the facts (Table 1, column 3 and 4), the gross violation of provisions of the Law becomes crystal clear. The provisions of the Act simply remain a dead letter so far as the poor migrant child workers of southern Rajasthan are concerned.

**Table 1: The Provisions and the Facts of Child Labour (P&R) Act, 1986**

Section	Provision	Facts	Comments
7 (2)	"The period of work on each day shall be so fixed that no period shall exceed three hours and that no child shall work for more than three hours before he has had an interval for the rest for at least one hour."	Workers work from early morning till late evening.	Total work hours comes to five
7 (3)	"The period of work of a child shall be so arranged that inclusive of his interval for the rest, it shall not be spread over <b>more than six hours</b> , including the time spent in waiting for work on any day."	Total Work Hours: 9 to 12 each day. <b>The work is spread over 14 hours from 5 a.m. to 7 p.m.</b>	If we read this with S 7(2), it is obvious that as per the law no child will work for more than five hours.
7 (4)	"No child shall be permitted or required to work between 7 p.m. and 8 a.m."	Work for every child starts by 5-6 in the morning. All the farmers have invariably accepted that workers including child labour start work before 8 a.m.	The children have to start work early to pluck male flowers which cannot be plucked later when sun becomes strong.



Section	Provision	Facts	Comments
7 (5)	No child shall be required or permitted to work overtime”	Every child works 9 to 12 hours every day as against six hours stipulated in the law including rest period.	The child works for more than double the legal time which is prohibited in law.
9 (2)	Under this section it is obligatory for each employer of child labour to give written notice to the designated Inspectors containing certain details about the employer, nature of work etc.	None of the thousands of employers have ever informed inspectors about the fact that children are working on their farm.	
11	This sections makes employers bound to keep registers giving details about the child labour and their work	No employer maintains this register.	
13	This section specifies the provisions to be made by the employers for health and safety of child labour	No health facilities, improper accommodation, lack of protective clothing is widely observed.	

### **(b) Minimum Wages Act, 1948 (MWA)**

The MWA, discussed in the Annex section of Debolina Kundu’s paper titled **‘Policies to Safeguard Migrants’ Rights: a Critical Approach ’**, is considered to be the first important social legislation that was promulgated immediately after the transfer of power in 1947. The MWA has provision not only to ensure payment of minimum wage and overtime but it also has the provision for revision of wage every five years. Our present study as well as earlier reports provides enough evidence to the effect that the provisions of the MWA stand violated by the employers so far as payment of the wage and over time is concerned. The State machinery has also been found lacking in ensuring wages to workers as per the provisions of the MWA.



### **(c) Interstate Migrant Workmen (Condition of Service and Regulation of Employment) Act, 1979 (ISMWA)**

This Act was enacted to safeguard the interests of the inter-state migrant workmen. Majority of workers covered under our study are inter-state migrants as per the ISMWA and therefore the workers are entitled to the benefits under ISMWA. They satisfy all the conditions stipulated in the Act. We have discussed the issue in great detail with a large number of Mets in the state who recruit labour in the state of Rajasthan on behalf of the Gujarat employers and each one of them agreed that the workers they are taking to Gujarat are Migrants as per ISMWA. The following facts of the case do not leave any scope for any ambiguity on the issue:

- (a) Workers are recruited by the Mets on the instructions of the employers.
- (b) The number of workers employed in each establishment is more than five.
- (c) The employers are already paying one-way (onward) journey cost to workers
- (d) Accommodation is provided free of cost to all the workers.
- (e) The workers are from the state of Rajasthan and the employers and the establishments are located in the state of Gujarat.

The employers, however, are escaping the provisions on the basis of certain documentary requirement from the employers as stipulated in the Act/Rules. The employers do not get themselves registered. Because of the non-implementation of ISMWA, workers are deprived of the benefit of various welfare provisions included in the Act and Rules. For instance, workers do not get displacement allowance (Section 14); journey allowance (Section 15); suitable accommodation, free of charge medical facilities, protective clothing, etc (Section 16).

### **(d) Bonded Labour (Abolition) Act, 1976 (BLA)**

Without any exception, all the workers in the cottonseed industry irrespective of age, sex or region are recruited through middlemen against an advance. Invariably all (employers, contractors and workers) admit candidly that the work has to be completed. To prevent workers from leaving without





completing the work, contractors are made responsible for maintaining required labour supply at all times, payment is refused to workers who leave in-between and accounts are settled only at the end of the work-period. Another important aspect of the employment is that the workers are paid about two-thirds of the minimum wage.

The provisions the BLA suggest that there are four important stipulations that need to be satisfied to be bonded labour as per the Act. First, there should be an advance. Second, the worker should be doing work in lieu of that advance. Third, the wages paid are less than the minimum wage prescribed by the competent authority. Fourth, worker loses the right to move freely through out the country. All these stipulations, as we noted above, are satisfied in case of the Bt cotton workers irrespective of age, caste region and religion of the workers. In fact, the only one fact that workers are paid less than the minimum wage make them bonded labour as per the ruling of the Supreme Court of India in the well known case, *People's Union for Democratic Rights Union of India and Others*, (1982) 3 SCC 235 Non-payment of minimum wage has been held to be in violation of Article 23 of the Constitution of India. Thus, as per Bonded Labour Act read independently as well as in conjunction with the Supreme Court ruling, the cottonseed workers in Gujarat workers are bonded labour.

### **ILO Convention and Cottonseed Workers**

We shall confine our discussion in this section to two ILO Conventions 138 on 'Minimum Wage of Employment' and 182 on 'Worst form of Child Labour', both not ratified by India.

#### **(a) ILO Convention 138 on Minimum Wage**

Article 2(3) of the Convention states: "The minimum age specified in pursuance of paragraph 1 of this Article shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years". Article 3(1) further states, "The minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardize the health, safety or morals of young persons shall not be less than 18 years". Keeping in view the conditions of work discussed above in relation to cottonseed workers, Article 3(1) is certainly more relevant.



The CLA in India, on the other hand, does not specify minimum wage of work. Therefore it is legal for a seven-year old to work on farms like cottonseed. It is not illegal as per CLA. The ILO Convention sets a minimum age of 13 years in certain cases of light work provided the work does not interfere in the development and attending school or training of the child concerned. It is obviously not relevant in the present case (Article 7(1)).

### **(b) ILO Convention 182**

Let us first understand what the ILO Convention defines as worst form of child labour. Article 3 of the ILO Convention 182 states:

“For the purposes of this Convention, the term the worst forms of child labour comprises:

- (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.”

Article 2 of the convention defines the age of child as 18 years. Section (a) and (d) are relevant in the present case.

With regard to trafficking, the UN Convention says:

“The recruitment, transportation, transfer, harboring, or receipt of persons by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or service, slavery



or practices similar to slavery, servitude or the removal of organs.” (UN protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000).

If we examine mode of recruitment and conditions of employment of cottonseed workers of southern Rajasthan in relation to the above-mentioned definition of trafficking, then definitely young workers from southern Rajasthan are trafficked to work in the Bt cotton fields. The workers are recruited, transported, harboured, by means of coercion, fraud, deception; abuse of power (including parental) for the purpose of exploitation through forced labour and servitude.

Thus, as per the condition stipulated in ILO Convention Article 3(a), the workers are toiling under worst form of child labour. In fact the definition as given in section 3(d) is also equally applicable to the workers in question. Long hours of work, use of pesticides, sexual exploitation, snake bites, imbibing of bad habits amounting to moral degradation too make this work worst form of child labour.

As mentioned in the beginning of this section, the Government of India has not ratified this convention and thus government is not legally bound to implement its provisions. But there are other reasons that provide sufficient cause to ensure that the provisions of the Conventions are effected. First, legally the State may not be bound but morally she is. As a matter of fact each of the enlightened citizens is. Secondly, the CSP is fully controlled by the MNC Monsanto. The Company has clearly stated in its human rights policy that, ‘Monsanto will not tolerate any form of exploitative child labour as defined in ILO Convention 182 Article 3’ (Human Rights Policy of Monsanto). Thirdly, if country of origin of the concerned MNC has been following the given labour standards, it must be obligatory for the concerned MNC to follow the same standards everywhere. This is the only true spirit of the globalization. Globalisation must be for betterment of the human society and not otherwise.