

# URBAN INDIA



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## 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





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# POLICIES TO SAFEGUARD MIGRANTS' RIGHTS: A CRITICAL APPROACH

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## Abstract

*Any discussion on migration and the condition and entitlements of migrant workers remains incomplete without a reference to the policy framework available to safeguard their rights at the destination. It may be mentioned here that except for the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979, there are no other laws dealing exclusively with migrants in India. Most of the migrant workers are poor, illiterate and engaged in informal sectors of employment. Usually, they are unaware of the labour laws meant to safeguard their rights. This paper discusses the basic tenets of the various labour legislations and their implications, in addition to court cases which have bearing on the living and working conditions of migrant workers. It may be noted that some existing legislations to safeguard the security of workers are equally applicable to migrant workers.*

## Introduction

Migration and urbanization are the direct manifestations of the process of economic development in space, particularly in the contemporary phase of globalization and neo-liberalisation. A large part of migration and urbanization in India have historically been linked to stagnation and volatility of agriculture and lack of sectoral diversification within the agrarian economy. Growth rates in agricultural production and income have been notably low, unstable and disparate across regions over the past several decades, which have resulted in lack of livelihood opportunities in rural areas. In the period of structural adjustment, there had been allow rate of infrastructural investment in the

<sup>1</sup> The author is grateful to Ms. Mukta Naik and Ms. Raeesa Vakil for their help in editing this article.



public sector in order to keep budgetary deficits low. This had affected agriculture adversely, leading to out-migration from several backward rural areas<sup>2</sup> with most of the migrants being absorbed within urban informal economy. The primary concern of migration related policies must therefore be to address the problems reflecting ecological footprints of large cities in regions that have become chronically out-migrating and stabilising their agrarian economy through the creation of livelihood opportunities<sup>3</sup>. Enabling rural people to avail urban amenities without having to shift to a town and strengthening rural urban linkages and commutation would also be important strategies to bring about balanced economic development across the country.

In the light of the above, the present paper analyses the labour laws in the country safeguarding the rights of the migrant workers as well as the administrative and legal constraints currently faced by the migrants in accessing land, livelihood and basic amenities. It also identifies the major areas of concern and puts forward a policy perspective for dealing with the problems of migrant workers.

### **Migrants' Access to Land and Amenities: Administrative and Legal System**

The civil and political rights are guaranteed by Part III of the Indian constitution include right to life and liberty, freedom of speech, and equality before law. As enshrined in Article 21 of Part III of the Indian Constitution, there are important economic, social and cultural rights. These include, right to shelter and right to work, among others. These are, however, not enforceable against the state.

Right to education is now in Part III and an enforceable right under Article 21-A. Besides this, India is a signatory to the International Covenant on Economic, Social and Cultural Rights (ICESCR) as well as several other multilateral treaties. Obligations arising under these treaties, however, are not by their own force binding on the Constitution or domestic law. Appropriate legislative or executive actions have to be taken for bringing

<sup>2</sup> American India Foundation (2006)

<sup>3</sup> United Nations (1995) talks of attacking the "root cause of migration especially those related to poverty".



them into force. The Directive Principles of State Policy, however, enjoin upon the State to endeavour to foster respect for international law and treaty related obligations. Furthermore, statutory provisions under Indian domestic law have been interpreted, as a matter of principle, consistent with the country's international obligation to the extent possible.

### ***Constitutional Provision of Right to Life and its Interpretation***

The economic, social and cultural rights of Part IV, unlike the civil and political rights of Part III, are not justifiable. Notwithstanding this, the Supreme Court of India in some landmark judgments has held that some of these rights are derivable from the fundamental rights and thus become justifiable. It has thus enlarged the meaning of life under Article 21 of the Constitution to include within its ambit, a few of the socio-economic rights. In an important judgment, the Court has tried to differentiate animal-like existence from human existence, thereby bringing in the right to shelter within the purview of the article, despite this not figuring in even in Part IV of the Constitution.<sup>4</sup> In the case of *Olga Tellis and others versus Bombay Municipal Corporation* (1985),<sup>5</sup> the Apex Court holds that "The sweep of the right to life conferred by Article 21 is wide and far reaching. It does not mean merely that life cannot be extinguished or taken. Furthermore, in *Chameli Singh V. State of U.P.* ((1996) 2 SCC 549) case, the Supreme Court had considered the right to shelter as a fundamental right reading it into Article 21 of the Constitution of India. It argued: "Shelter for a human being, therefore, is not a mere protection of his life and limb. It is however where he has opportunities to grow physically, mentally, intellectually and spiritually."

In the cases dealing with unauthorised encroachment and eviction of slum dwellers in the context of the right to shelter, the Courts have taken a sympathetic view. Nonetheless, it has maintained that no one can claim right of occupation of public places or of public land. In the case of *Ahmedabad Municipal Nagarpalika Vs. Nawabkhan Gulabkhan*, reported in (1997) 11 SCC 121, the Apex Court has observed that "Article 19(1)(e) accords right to residence and settlement in any part of India as a fundamental right." It then goes on to clarify that "in all cases it may not be necessary, as a condition for

<sup>4</sup> The right to shelter does figure in the International Covenant on Economic, Social and Cultural Rights.

<sup>5</sup> 1985 3 SCC 545



ejection of the encroacher, that he should be provided with an alternative accommodation at the expenses of the State. Each case is required to be examined on the given set of facts and appropriate direction or remedy be evolved by the Court suitable to the facts of the case". The case also said that the State had a constitutional duty to provide housing to the poor and can do so, depending on its financial situation.

In the oft quoted case of *Olga Tellis*, noted above, the Apex Court, after equating right to means of livelihood to the right to life, finally comes to the verdict "that no person has the right to encroach, by erecting a structure or otherwise, on footpaths, pavements or any other place reserved or earmarked for a public purpose ....(and) that the provision contained in Section 314 off the Bombay Municipal Corporation Act is not unreasonable .....slums which have been in existence for a long time, say for twenty years or more, and which have been improved and developed will not be removed unless the land on which they stand or the appurtenant land, is required for a public purpose, in which case, alternate sites or accommodation will be provided to them."

Turning down the poverty plea in case of eviction of slum dwellers from Nagli Machi colony near Pragati Maidan in New Delhi, the Supreme Court holds: "desperation does not mean they can do something illegal by encroaching public land"<sup>6</sup>. Similarly, in the case of the recent demolition of a Dargah in Vadodara city, the Division Bench of Gujarat High Court took recognisance, *suo motu*, of the facts as reported in the Times of India and observed that ". Encroachment made on the public road by any one cannot be permitted or tolerated even for a minute as it causes lot of traffic problems as well as other problems for the public at large." In *Almitra Patel* case (2 SCC 679) in 2000 dealing with disposal of solid waste from slum colonies coming up in Delhi, the Court observed that "Establishment or creating of slums, it seems, appears to be good business and is well organised. The number of slums has multiplied in the last few years by geometrical proportion. Large areas of public land, in this way, are usurped for private use free of cost. It is difficult to believe that this can happen in the capital of the country without passive or active connivance of the land owning agencies and/or the municipal authorities. The promise of free land, at the taxpayers cost, in place of a jhuggi, is a proposal which attracts more land grabbers. Rewarding an encroacher on

<sup>6</sup> As reported in the Times of India, dated 10.5.2006).





public land with free alternate site is like giving a reward to a pickpocket. The department of slum clearance does not seem to have cleared any slum despite it's being in existence for decades. In fact more and more slums are coming into existence. Instead of Slum Clearance there is Slum Creation in Delhi. This in turn gives rise to domestic waste being strewn on open land in and around the slums. This can best be controlled at least, in the first instance, by preventing the growth of slums. The authorities must realise that there is a limit to which the population of a city can be increased, without enlarging its size. In other words the density of population per square kilometre cannot be allowed to increase beyond the sustainable limit. Creation of slums resulting in increase in density has to be prevented. What the slum clearance department has to show, however, does not seem to be visible".

The Supreme Court is even more categorical in the case of *Maharashtra Ekta Hawkers Union Vs Municipal Corporation, Greater Mumbai* (2004) 1 SCC 625, wherein it argues "There is no fundamental right under Article 21 to carry on any hawking business. There is also no right to do hawking at any particular place." Further, it says that, "The constant threat faced by the street vendors/ hawkers of losing their source of livelihood has forced them to seek intervention of the Courts across the country from time to time. In last 28 years, this Court has struggled to find a workable solution of the problems of street vendors/ hawkers on the one hand and other sections of society including residents of the localities/ places where street vendors/ hawkers operate and delivered several judgments including *Bombay Hawkers Union vs. Bombay Municipal Corporation* (1985) 3 SCC 528, *Sodan Singh vs. New Delhi Municipal Committee* (1989) 4 SCC 155, *Maharashtra Ekta Hawkers Union vs. Municipal Corporation, Greater Mumbai* (2004) 1 SCC 625, *Maharashtra Ekta Hawkers Union vs. Municipal Corporation, Greater Mumbai* (2009) 17 SCC 151, *Maharashtra Ekta Hawkers Union vs. Municipal Corporation, Greater Mumbai* (2009) 17 SCC 231 (this order was passed on 30.07.2004 but was printed in the journal only in 2009) and *Gainda Ram vs. Municipal Corporation of Delhi* (2010) 10 SCC 715, but the situation has not changed in last four decades. Rather, the problem has aggravated because of lackadaisical attitude of the administration at various levels and the legislative instruments made many decades ago have become totally ineffective"<sup>7</sup>.

<sup>7</sup> *Municipal Corporation, Greater Mumbai* (2004) 1 SCC 625, *Maharashtra Ekta Hawkers Union vs. Municipal Corporation, Greater Mumbai*, 2013.



The legal system thus does not guarantee the right to shelter but only to certain procedure being followed for removing encroachments and restoring possession of properties for public use. On several occasions, even these formalities are not observed which has ruptured the basis of various informal tenurial arrangements that had evolved over the years. Evictions in such cases have been possible, because of an equivocal government policy, with the Court reserving the authority to take decisions on a case-by-case basis and the absence of an official land tenure policy for slum dwellers, which might be capable of providing legal protection to them.

However, there have also been certain rulings that have favoured the migrant workers in the context of social welfare rather than shelter specifically. For example, in the *Bandhua Mukti Morcha v Union of India*, (1984) 3 SCC 161 – the Supreme Court held that the provisions of the Inter-State Migrant Workmen Act 1979 and Rules must be interpreted broadly to maximise registration of workers, as it is a social welfare legislation. Specifically the court held that in some cases, if contractors outsourced the hiring of labour to agents, registration would still be required, and original contractor would be liable for it under the Act. Also, in the *People's Union for Democratic Rights v Union of India*, (1982) 3 SCC 235 – the Supreme Court held that if contractor fails to provide amenities to the labour, then the duty rests on the principal employer. Non-compliance with the act amounts to a violation under Article 21. Likewise, in the *Damodar Panda v State of Orissa*, (1990) 4 SCC 11 – officers of the state of origin of the migrant workers should be allowed to hold inquiries on their welfare in the states to which they have migrated to.

### ***Legislations having Bearing on Migrants' Access and Right to Livelihood in Cities***

The first piece of legislation that addresses the problem of interstate migrants specifically was the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979, which entitled a migrant worker to a number of benefits like, pension after the age of 60, concession loans for house, group insurance, financial aid for dependents, children's education etc. A migrant workman is required to be registered in his "home" as well as "host" state, which more often than not has proved to be a stumbling block in getting the benefits under the Act.



## Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979

**Purpose and Object:** An Act to regulate the employment of inter State migrant workmen and to provide for their conditions of service and formatters connected therewith.

**Applicability:** It extends to the whole of India. It applies to every establishment in which five or more Inter-State migrant workmen (whether or not in addition to other workmen) are employed or who were employed on any day of the preceding twelve months; and to every contractor who has employed five or more migrant workers in the last twelve months. [Section 1(4)].

**Eligibility for Benefits:** According to the act, an “Inter-State Migrant Workman” means any person who is recruited by or through a contract or 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. [Section 2(1)(e)].

**Benefits:** The Act makes the contractors responsible for furnishing the particulars and in such form as may be prescribed, to the specified authority in State from which an inter-state migrant workman is recruited and in the State in which such workman is employed ; and to issue to every inter-State migrant workman, a pass book containing details of employment affixed with a passport size photograph of the workman. [Section 12] Contractors and establishments can’t hire migrant workers unless they themselves are registered with the appropriate government first [Section 6].

The Act also sets regulations for the wage rates, holiday, hours of work and other conditions of service of an inter-State migrant workman and makes provisions for benefits like:

- Displacement allowance in addition to the wages, which shall be paid by the contractor to every inter State migrant workman at the time of recruitment ,a displacement allowance equal to fifty percent of the monthly wages payable to him or seventy-five rupees, whichever is higher. [Section 14].
- Journey allowance which shall be payable by the contractor to the workman both for the journeys to and from his home state; such



workman shall be also entitled to payment of wages during the period of such journeys as if he were on duty [Section 15].

- It shall be the duty of every contractor employing inter-State Migrant workmen in connection with the work of an establishment to ensure regular payment of wages to such workmen; to ensure equal pay for equal work irrespective of sex; to provide the prescribed medical facilities to the workmen, free of charge among other facilities. [Section 16 – this section also requires the contractor/establishment to provide residential accommodation – this should probably be mentioned].

It may be noted that the process of getting registered has been neither easy nor worker-friendly. State-level agencies like Labour Commissioners and Provident Fund Commissioners that play an important role in the implementation of the Act rarely show much interest in these activities. There is no effective implementation of the Employee Provident Fund laws. In most cases, there has been no provision of workmen's compensation insurance and making Provident Fund contribution. The provisions of facilities at the worksite are not up to the prescribed standards in the Act. The prevalent malpractices by the contractors result in gross violation of the minimum wage and equal remuneration acts for workers.

The other legislation that has a direct bearing on the migrants right to the city is the Slum Areas (Improvement and Clearance) Act 1956 as a large majority of the migrants live in such areas. The Act empowers the state government to resettle the slum dwellers outside the city but only when the present location is says "unfit for human habitation" or when land is required for a public purpose. It, unfortunately, does not define public purpose in any rigorous manner. The lack of definition of 'public purpose' is a historical problem, and applies equally to land acquisition laws. Consequently, the state governments have used it as an instrument for slum clearance. While interpreting various provisions contained in the Slum Areas (Improvement and Clearance) Act, 1956 the Supreme Court in the case of Punnu Ram & others Vs. Chiranji Lal Gupta<sup>8</sup> and others, the Supreme Court has upheld its constitutional validity. The validity of Section 19 of the Act was challenged in the case of Jyoti Pershad v. Administrator for The Union Territory of Delhi, [1962] 2 SCR 125, has upheld its constitutional validity. In that case, it was contended that Act has vested

<sup>8</sup>(1999) – 3-SCC-273



in the competent authority the power to withhold eviction in pursuance of the orders or decrees of courts without affording any guidance or laying down any principles for his guidance on the basis of which it could exercise his discretion and thereby vested in him an arbitrary and unguided power to pick and choose the decree-holders to whom he would permit execution and those to whom he would refuse such relief. Court negated the said contention by observing that the Act was enacted for two purposes; (1) the improvement and clearance of slum areas in certain Union territories, and (ii) for the protection of tenants in such areas from eviction. While considering Chapter III which is headed 'slum improvement' and Chapter IV which is headed "Slum Clearance and Re- Development" Court observed that in cases where the buildings and the entire area are to be ordered to be demolished, the dwellers would, of course, have to vacate but it is presumed that alternative accommodations would necessarily have to be provided before any such order is made. And the process would have to be carried out in an orderly fashion if the purpose of the Act is to be fulfilled and the policy behind it, namely the establishment of slum dwellers in healthier and more comfortable tenements so as to improve the health and morals of the community, is to be achieved. The Court observed, "the policy of the enactment would seem to suggest that the slum dweller should not be evicted unless alternative accommodation could be obtained for him". Court further observed "We need only add that it was not, and could not be, disputed that the guidance which we have held could be derived from the enactment, and that it bears a reasonable and rational relationship to the object to be attained by the Act and, in fact, would fulfil the purpose which the law seeks to achieve, viz., the orderly elimination of slums, with interim protection for the slum dwellers until they were moved into better dwellings." (Emphasis added) Keeping in mind the scheme of the Act and the interpretation of Section 19 as aforesaid, the contention of the learned counsel for the appellant is required to be appreciated. The learned counsel for the appellant submitted that the High Court erroneously had interpreted that factors mentioned in Sub - Section (4)(a), (b) & (c) are to be considered as alternative and not consecutive. It is his contention that both these factors, namely, whether alternative accommodation within the means of the tenant would be available to him if he is required to vacate and whether the eviction is in the interest of improvement and clearance of the slum area are to be decided by the competent authority before granting or refusing the permission under sub-section (3) to institute the suit or the proceedings for obtaining any decree or order for eviction of a tenant from any building or any land in slum area or



the permission to execute decree or order obtained in any suit or proceedings before the commencement of the Act. It is contended that the legislature has taken caution in using the word that competent authority shall taken into account following factors as mentioned in clause (a), (b) & (c) of Sub-Section 4 before granting or refusing to grant such permission, hence, all factor are required to be taken into consideration jointly.

At the time of hearing, it is admitted that no rules are framed or guidelines are laid down prescribing other factors as contemplated by clause (c) of Section 19(4). Therefore, at present only two factors are required to be taken into consideration before granting or refusing to grant permission as contemplated by sub-section (3). Considering the provisions of Section 19, it is apparent that permission to file suit for evicting a tenant from any building or land in a slum area or to permit execution of such decree or order obtained prior to coming into force of the amendment Act, the competent authority is required to take into account factors mentioned in Clauses (a) & (b) of Sub-section (4). If the factors mentioned in Clause (a) is satisfied, that is to say, if the alternative accommodation within the means of the tenant is available, then there is no reason to hold that second factor is also required to be satisfied before granting permission under sub-section (3). In such a case, there could not be any justifiable reason for the competent authority to refuse to grant permission for filing the suit or proceedings for obtaining any decree or order for eviction of a tenant or for granting permission to execute decree or order, if obtained. Further, Clause (b) provides that before granting such permission, the competent authority should be satisfied whether the eviction is in the interest of improvement and clearance of the slum areas and if it is in the interest of improvement and clearance of the slum areas, then permission for eviction can be granted. In such cases also, a tenant would not be put to any hardship if he is evicted. The reason is, if there is a scheme of clearance of the slum area framed by the competent authority, then as observed by this Court in the case of 'Jyoti Pershad' (supra), the policy of the enactment suggests that slum dwellers should not be evicted unless alternative accommodation to be made could be obtained for him; that it the buildings or the entire area are to be ordered to be demolished, in that event, the dwellers would, of course, have to vacate, but it was presumed that alter-native accommodation would necessarily have to be provided before any such order is made. It is true that for some time alternative accommodation may not be provided to the tenant but it is required to be provided within reasonable time. Eviction process and improvement or re-construction process is required to be carried out in an



orderly fashion if the purpose of the act is to be fulfilled. Further, if the building is required by the owner for demolition or re-construction or improvement, then Section 20A takes care of the tenants. It provides that if the tenant desires to be replaced in the occupation of the building after completion of the work of improvement or re-erection of the building, then he is required to file an application before the competent authority. On the basis of this section, if the tenant is evicted on the ground of improvement or demolition of the building in the slum area, then tenant is required to be provided accommodation in the improved or re-constructed building.

There exist a plethora of labour laws, besides the two mentioned above, concerning the people engaged in unorganized sector concerning their wages, working conditions, social security, pension and provision of basic amenities but these are for particular groups of workers engaged in certain activities that are considered vulnerable. The more important ones among these are The Workman Compensation Act 1923, Minimum Wages Act 1948, Payment of Wage Act 1936, Industrial Disputes Act 1947, Employees State Insurance Act 1948, Employees Provident Funds and Miscellaneous Act 1952, Maternity Benefit Act 1961, Bonded Labour System (Abolition) Act, 1976 (No. 19 of 1976); Building and Other Construction Workers (Regulation of Employment and Condition of Service) Act, 1996 (No. 27 of 1996); Building and Other Construction Workers' Welfare Cess Act, 1996 (No. 28 of 1996); Contract Labour (Regulation and Abolition) Act, 1970; Child Labour (Prohibition & Regulation) Act, 1986; Maternity Benefit Act, 1961; Minimum Wages Act, 1948; Equal Remuneration Act, 1976; Payment of Gratuity Act, 1970; Payment of Wages Act, 1936 and Unorganized Workers' Social Security Act, 2008<sup>9</sup>. Factories Act, 1948 Payment of Bonus Act, 1965.

No differentiation is made in these Acts between "local" and "migrant" labourers. The latter however have specific problems in accessing land, capital, basic amenities because of its lacking in social capital due to ignorance and illiteracy, communication barriers, superior strength of employers and scattered nature of jobs and lack of unity and capacity to organize themselves. As a consequence, despite equality between migrants and non-migrants in terms of legal provisions, the latter rarely are able to benefit from these. There are often legal or administrative requirements like duration of stay at a particular

<sup>9</sup>These have been discussed in Annex.



place, an address in a formal colony, network of acquaintance who can stand guarantee in front of public agencies for being covered under certain schemes where the migrants are found in wanting. The analysis here must therefore not be confined to Acts pertaining to migrants but general legal and administrative system and analyse how the migrants tend to get systematically excluded from the provisions.

Recently on 25<sup>th</sup> November, 2014, at the time of going to press the Rajya Sabha has just passed the Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by Certain Establishments) Amendment Bill (The Hindu, November 26<sup>th</sup> 2014).

The Bill seeks to amend the Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by Certain Establishments) Act of 1988 ("Exemption Act").

The Exemption Act allowed industries that employed between 10 to 19 people certain benefits regarding compliance with labour laws. A number of labour laws, such as the Contract Labour (Regulation and Abolition) Act, 1970, the Factories Act, 1948, etc, required industries to maintain certain records and registers for compliances with these laws. These acts also required the industries to file returns with the Central or State governments, indicating compliance. The Exemption Act listed 9 such laws<sup>10</sup>, and allowed these small industries to maintain one common register for all of them. Additionally, instead of filing separate returns to the governments under each of these acts, they could file one common annual return.

The Exemption Bill, if it is passed by the Lok Sabha and assented to, by the President, will make three significant changes. These are:

- 1) The size of the establishments that are exempted will increase. The limit on employees will be raised from upto 19 to upto 40 employees.

<sup>10</sup>The acts, listed in the first Schedule to the Exemption Act, are The payment of Wages Act, 1936 (4 of 1936); (2) The Weekly Holidays Act, 1942 (18 of 1942); The Minimum Wages Act, 1948 (11 of 1948); The Factories Act, 1948 (63 of 1948); The plantations Labour Act, 1951 (69 of 1951); The Working Journalists and other Newspaper Employees (conditions of service) and Miscellaneous Provisions Act, 1955 (45 of 1955); The Contract Labour (Regulation and Abolition) Act, 1970 (37 of 1970) ; The Sales Promotion employees (Conditions of Service) Act, 1976 (11 of 1976). (9) The Equal Remuneration Act, 1976 (25 of 1976).





- 2) Establishments will be able to maintain and file the single register and annual return in electronic as well as paper format, if they want.
- 3) The number of acts for which these exemptions apply have been increased to include, amongst others, 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<sup>11</sup>.

Effectively, this makes reporting compliance easier for smaller industries without removing the need for substantive compliance with these laws.

An overview of the Constitutional and legal provisions along with the Court judgments and administrative orders suggests that the general and consistent stand of the State has been that the hutment dwellers occupying lands that are hazardous like river banks, rain water channels in proximity to railway tracks or pollutant industries, and that reserved for proposed roads, housing schemes and other public purposes cannot be allowed to remain there, to the detriment of the general interest and convenience of other members of the society. It nonetheless stipulates that notices must be served to the hutment dwellers reasonably in advance to give them time to vacate the encroached land. The evictions of migrants by public authorities are thus permissible under the relevant laws, such as, Municipal Corporation Acts of the cities, Town Planning and Urban Development Act of the State and Slum Areas (Clearance and Improvement), for the purpose of fulfilling the objects of those enactments. The informal tenurial arrangements like getting a stamp paper transfer from earlier occupant, getting covered under formal service delivery system, paying certain property related taxes, assurances from politicians and administrators etc., that had certain credibility with the people, slum leaders, police and also civic officials are now being seen as of little value.

## Conclusion

Despite existence of several labour laws their enforcement have been minimal. The number of prosecutions under these laws has been almost nil. Most of the migrant workers are engaged in unorganized sectors where they are hired

<sup>11</sup> The other acts now included are The Motor Transport Workers Act, 1961, The Payment of Bonus Act, 1965, The Beedi and Cigar Workers (Conditions of Employment) Act, 1966, The Dock Workers (Safety, Health and Welfare) Act, 1986 and the The Child Labour (Prohibition and Regulation) Act, 1986.



on contractual/ seasonal basis or are daily wage labourers. In short, there is no job security. Contractors exploit the workers by creating a fear of sacking their jobs. This increases the vulnerability of the workers in the unorganized sector. Although, several Acts have the provision of payment of specified remuneration to the labourers, there are malpractices prevalent in the system, and somehow vested interests have allowed them to continue (Saini, 2010). Giri and Rath (1998) has shown how the political factors have played a dominant role in determining or revising the minimum wage rates in the state of Orissa. The increase in money wages over the years did not ensure significant rise in the real wages. Most often, minimum wages are not paid in unorganized sectors.

In case of inter-state migrants, it is often noticed that migrant workers are not even paid the minimum wages as prescribed by the government. Also, there is absence of amenities and infrastructural facilities at the worksites. The Act (Inter State Migrant Workmen Act, 1979) does not cover those people who crossed the state boundary on his/her own and not under any contractor. Under such circumstances, a large proportion of contract labourers move beyond the scope of legislation. Further, the laws are too vague and leave a great deal of discretion in the hands of bureaucracy (Dasgupta, 1988).

The drafting of Unorganized Sector Workers' Social Security Bill, 2005, has been seen as a welcome step. However, there are two problems with this bill. Firstly, no attention has been paid to the heterogeneous composition of unorganized sector and secondly, by combining all sub sectors of the unorganized sector together, the bill has discouraged the present struggle for social security carried out by trade unions and other organizations (Hirway, 2006).

The Government must ensure that loopholes are plugged while drafting or amending a bill (or part of it), so that its benefits reach the targeted community. Strict implementation of the Act needs to be made possible. Also, the Government should include the NGOs and other voluntary organizations to implement several aspects of the Act as these institutions work at the grass root level.



## Annex

### Payment of Wages Act, 1936

**Purpose and Object:** The Payment of Wages Act, 1936 has been enacted to regulate the payment of wages of certain specified classes of workers. The Act provides for prompt and effectual remedy to the workers against illegal and unjustified deductions from their wages. Further, the Act also seeks to ensure timely payment of wages to workers and prescribes mode of payment of wages to the employed persons.

**Applicability:** Payment of Wages Act, 1936 is a central legislation and extends to whole of India. It applies to:

- All persons employed, whether directly or through contractors, in a factory or certain specified industrial or other establishments.
- Applicable on employees drawing wages up-to Rs. 6,500 per month.

#### **Responsibility of Payment**

- In case of factories, person named as manager under the provisions of Factories Act, 1948;
- In case of industrial or other establishments, person responsible for supervision and control of the industrial or other establishments;
- In case of railways, the railway administration and the person nominated by railway administration for the local area concerned;
- In case of contractor, person designated by contractor.

### Minimum Wages Act, 1948

**Purpose and Object:** The Minimum Wages Act, 1948 has been enacted to provide the minimum wages in certain specified employments. The Minimum Wages Act binds the employers to pay the minimum wages fixed under the Act from time to time. Under the provisions of the Act both the Central and State Government have authority to fix, review, revise and enforce the minimum wages to workers employed in scheduled employment under their respective jurisdictions.

**Applicability:** Minimum Wages Act, 1948 extends to whole of India.

- It applies on persons employed in an employment specified in Part I (Non-



agricultural Employment) and Part II (Agricultural Employment) of the Schedule to the Minimum Wages Act, 1948.

### ***Fixation of Minimum Wages***

- Appropriate Government (Central or State, as the case may be) has authority to fix the minimum rate of wages in respect of employment specified in Part I and II of the Schedule to the Act.
- The Central Government has authority to fix rate of minimum wages for 45 spheres of employment; whereas, the State Governments have authority to fix rate of minimum wages for 1596 spheres of employment in their territory.

***Rate of Minimum Wages:*** The Central Government and the State Governments have fixed different rate of minimum wages for different spheres /sectors of employment in their respective jurisdictions.

### **Maternity Benefit Act, 1961**

***Purpose and Object:*** The Maternity Benefit Act, 1961 has been enacted to regulate the employment of women in certain establishments for a certain period before and after the child birth and also to provide for maternity and other benefits.

***Applicability:*** Maternity Benefit Act, 1961 extends to whole of India. It applies to:

- Every establishment being a factory, mine or plantation including any such establishment belonging to Government and to every establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances;
- It also applies to every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which 10 or more persons are or were employed on any day of the preceding 12 months;
- Maternity Benefit Act, 1961 is not applicable on any factory or other establishment to which the provisions of ESI Act, 1948 apply.



### ***Eligibility for Maternity Benefits***

- Every woman shall be entitled to maternity benefit;
- No woman shall be entitled to maternity benefit unless she has actually worked in an establishment for a period not less than 80 days during 12 months immediately preceding the date of her expected delivery.

### ***Maternity Benefits***

- Maternity Benefits may be claimed for a maximum period of 12 weeks - 6 weeks up to and including the day of her delivery and 6 weeks immediately following that day.
- Maternity Benefits are calculated at the rate of Average Daily Wages for the period of her actual absence.
- The 2008 Amendment added the benefit of a medical bonus. Every woman entitled to maternity benefit under this Act shall also be entitled to receive from her employer a medical bonus of one thousand rupees, if no pre-natal confinement and post-natal care is provided for by the employer free of charge. This amount can be increased by the Central Government up to the amount of twenty thousand rupees.
- Act also provides provisions for leave for miscarriage, leave for illness arising out of pregnancy or delivery, premature birth of child or miscarriage and nursing breaks for nursing the child until the child attained the age of 15 months.

### **Contract Labour (Regulation and Abolition) Act, 1970**

***Purpose and Object:*** An Act to regulate the employment of contract labour in certain establishments and to provide for its abolition in certain circumstances and for matters connected therewith.

***Applicability:*** It extends to whole of India. It applies to

- every establishment in which twenty or more workmen are employed or were employed on any day of the preceding twelve months as contract labour.
- To every contractor who employees or who employed on any day of the preceding twelve months twenty or more workmen.
- It shall not apply to establishments in which work only of an intermittent



or casual nature is performed. For this purpose, work performed in an establishment shall not be deemed to be of an intermittent nature if it is performed for more than hundred and twenty days in the preceding twelve months or if it is of seasonal character and is performed for more than sixty days in a year.

***Definition(s):***

- A workman shall be deemed to be employed as “contract labour” in or in connection with the work of an establishment when s/he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer.
- ‘contractor’, in relation to an establishment, means a person who undertakes to produce a given result for the establishment, other than a mere supply of goods of articles of manufacture to such establishment, through contract labour or who supplies contract labour for work of the establishment and includes a sub-contractor.

***Registration and License:*** Every establishment to which this Act applies shall get itself register with the registering authority. Every contractor/sub-contractor to whom this Act applies shall obtain a license from the licensing authority and such contractor/sub-contractor shall undertake or execute work through contract labour in accordance with terms of license issued by the licensing officer.

***Obligation of Payment:*** Contractor/Sub-contractor shall be responsible for payment of wages to each worker employed by him as contract labour;

- Every such payment to contract labour shall be paid in the presence of authorized representative of principal employer;
- In case the contractor/sub-contractor fails to make payment of wages within the prescribed period or makes short payment then, the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the Contractor / Sub-contractor.

**Payment of Gratuity Act, 1970**

***Purpose and Object:*** The Payment of Gratuity Act, 1972 has been enacted to provide for a scheme for payment of gratuity to employees engaged in



factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments upon their superannuation, retirement, resignation, death or disablement due to accident or disease.

**Applicability:** Payment of Gratuity Act, 1972 extends to whole of India. It applies to:

- Every factory, mine, oilfield, plantation, port and railway company, shop or establishment in which 10 or more persons are or were employed on any day of the preceding 12 months;
- All such other establishments or class of establishments in which 10 or more persons are or were employed on any day of the preceding 12 months as the Central Government may, by notification, specify in this behalf.

**Eligibility:** Gratuity is payable to employees who have rendered continuous service of at least 5 years.

#### **Maximum Limit**

- Employees covered under the Act are entitled for maximum amount of gratuity of Rs. 10,00,000.
- The employer may be pleased to offer better terms of gratuity. However, any amount exceeding the maximum prescribed limit of gratuity (Rs.10,00,000) becomes taxable in the hands of the recipient.

#### **Rate of Gratuity**

- Gratuity is payable at the rate of 15 days' last drawn wages by the employee concerned for every completed year of his service or part thereof in excess of 6 months.
- In case of a monthly rated employee, 15 days' wages shall be calculated by dividing the last drawn monthly wages by 26 and multiplying the quotient by 15.
- In case of a piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of 3 months immediately preceding the termination of his employment (without taking into account the wages paid for any overtime work).



## **Bonded Labor System (Abolition) Act, 1976 (No 19 of 1976)**

**Purpose and Object:** An Act to provide for the abolition of bonded labour system with a view to preventing the economic and physical exploitation of the weaker sections of the people and for matters connected therewith or incidental thereto.

**Applicability:** It extends to the whole of India and shall be deemed to have come into force on the 25<sup>th</sup> day of October, 1975.

**Eligibility:** The existence of an agreement between the debtor and creditor is ordinarily presumed, under the social custom, in relation to the following forms of forced labour, namely:

Adiyamar, Baramasia, Basahya, Bethu, Bhagela, Cherumar, Garru-galu, Hali, Hari, Harwai, Holya, Jana, Jeetha, Kamiya, Khundit-Mundit, Kuthia, Lakhari, Munjhi, Mat, Munish system, Nit-Majoor, Paleru, Padiyal, Pannayilal, Sagri, Sanji, Sanjawat, Sewak, Sewakia, Seri, Vetti.

### **Definition(s)**

- “bonded labour” means any labour or service rendered under the bonded labour system;
- “bonded labourer” means a labourer who incurs, or has, is presumed to have, incurred, a bonded debt;
- “bonded debt,” means an advance obtained, or presumed to have been obtained, by a bonded labourer under, or in pursuance of, the bonded labour system;
- “bonded labour system” means the system of forced, or partly forced, labour under which a debtor enters, or has, or is presumed to have, entered, into an agreement with the creditor to the effect that,
  - in consideration of an advance obtained by him or by any of his lineal ascendants or descendants (whether or not such advance is evidenced by any document) and in consideration of the interest, if any, on such advance, or
  - in pursuance of any customary or social obligation, or
  - in pursuance of an obligation devolving on him by succession, or





- for any economic consideration received by him or by any of his lineal ascendants or descendants, or
- by reason of his birth in any particular caste or community, he would:
  - i. render, by himself or through any member of his family, or any person dependent on him, labour or service to the creditor, or for the benefit of the creditor, for a specified period or for an unspecified period, either without wages or for nominal wages, or
  - ii. forfeit the freedom of employment or other means of livelihood for a specified period or for an unspecified period, or
  - iii. forfeit the right to move freely throughout the territory of India, or
  - iv. forfeit the right to appropriate or sell at market value any of his property or product of his labour or the labour of a member of his family or any person dependent on him, and includes the system of forced, or partly forced, labour under which a surety for a debtor enters, or has, or is presumed to have, entered, into an agreement with the creditor to the effect that in the event of the failure of the debtor to repay the debt, he would render the bonded labour on behalf of the debtor.

***Main Provisions:***

- With abolition of bonded labour system w.e.f 25.10.1975, bonded labourers stand freed and discharged from any obligation to render bonded labour.
- All customs, traditions, contracts, agreements or instruments by virtue of which a person or any member of the family dependent on such person is required to render bonded labour shall be void.
- Every obligation of a bonded labourer to repay any bonded debt shall be deemed to have been extinguished.
- No suit or any other proceeding shall lie in any civil Court or any other authority for recovery of any bonded debt.
- Every decree or order for recovery of bonded debt not fully satisfied before commencement of the Act shall be deemed to have been fully satisfied.



- Every attachment for the recovery of bonded debt shall stand vacated.
- Any movable property of the bonded labourer, if seized and removed from his custody shall be restored to him.
- Any property possession of which was forcibly taken over by the creditor shall be restored to the possession of the person from whom seized.
- Any suit or proceeding for the enforcement of any obligation under the bonded labour system shall stand dismissed.
- Every bonded labourer who has been detained in Civil Prison shall be released from detention forthwith.
- Any property of a bonded labourer under mortgage, charge, lien or any other encumbrance, if related to public debt shall stand freed and discharged from such mortgage.
- Freed bonded labourers shall not be evicted from the homestead land.

### **Equal Remuneration Act, 1976**

**Purpose and Object:** To provide for the payment of equal remuneration to men and women workers and for the prevention of discrimination on the ground of sex against women in the matter of employment and for matters connected therewith or incidental thereto.

**Applicability:** It extends to whole of India.

**Definition:** According to the Act, the term 'remuneration' means " the basic wage or salary and any additional emoluments whatsoever payable, either in cash or in kind, to a person employed , if the terms of the contract of employment, express or implied, were fulfilled.

### **Main Provisions**

- No employer shall pay to any worker, employed by him/ her in an establishment, a remuneration (whether payable in cash or in kind) at rates less favourable than those at which remuneration is paid by him/ her to the workers of the opposite sex in such establishment for performing the same work or work of a similar nature. Also, no employer shall, for the purpose of complying with the provisions of this Act, reduce the rate of remuneration of any worker.



- No employer shall, while making recruitment for the same work or work of a similar nature, or in 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.
- Every employer shall maintain such registers and other documents in relation to the workers employed by him/ her in the prescribed manner.
- If any employer:- (i) makes any recruitment in contravention of the provisions of this Act; or (ii) makes any payment of remuneration at unequal rates to men and women workers for the same work or work of a similar nature; or (iii) makes any discrimination between men and women workers in contravention of the provisions of this Act; or (iv) omits or fails to carry out any direction made by the appropriate Government, then he/ she shall be punishable with fine or with imprisonment or with both.
- Where an offence under this Act has been committed by a company, every person who at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed, to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

### **Child Labor (Prohibition and Regulation) Act, 1986**

**Purpose and Object:** To prohibit the engagement of children in certain employments and to regulate the conditions of work or children in certain other employments.

**Applicability:** It extends to the whole of India.

**Eligibility for Benefits:** The 'Child' mentioned in the law refers to a person who has not completed fourteen years of age.

#### **Benefits**

- According to the law, no child shall be employed or permitted to work in almost 64 types of operations which include cinder picking, clearing of an ash pit or building operation in the railway premise, work relating to selling of crackers and fireworks in shops with temporary licenses, beedi making, manufacture of slate pencils (including packing) etc.



- No child shall be required or permitted to work in any establishment in excess of number of hours prescribed. In Kerala the working hour is limited to four and half hours in a day.
- The period of work on each day shall not exceed three hours and no child shall work for more than three hours before he has had an interval for rest for at least one hour.
- No child shall be permitted or required to work between 7 p.m. and 8 a.m.
- No child shall be required or permitted to work overtime.
- Every child shall be allowed in each week a holiday of one whole day.

### **Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996**

**Purpose and Object:** The Building and Other Construction Workers (Regulation and Conditions of Service) Act, 1996 aims to provide for regulation of employment and conditions of service of the building and other construction workers as also their safety, health and welfare measures in every establishment which employs or employed ten or more workers.

**Applicability:** It extends to the whole of India. It shall be deemed to have come into force on the 1st day of March, 1996. It applies to:

- Every establishment which employs, or had employed on any day of the preceding twelve months, ten or more building workers in any building or other construction work.
- It is applicable to the employer and the contractor.

#### **Eligibility**

- A building construction worker who has completed his 18 year of age but not completed 60 years of age,
- Who has been engaged in any building or other construction work for not less than 90 days during the preceding 12 months.

#### **Duties of Employer**

- It shall be the duty of every employer who is undertaking any of the operations or works related to or incidental to building or other construction work to which these rules apply:



- To comply with such of the requirements of these rules as are related to him: Provided that the requirements of this clause shall not affect any building worker if and so long as his presence in any place of work is not in the course of performing any work on behalf of his employer and he is not expressly or impliedly authorized or permitted by his employer to do the work; and
- To comply with such of the requirements of these rules, as are related to him in relation to any work, act or operation performed or about to be performed by him.
- It shall be the duty of every employer who erects or alters any scaffold to comply with such of the requirements of the provisions of these rules as relate to the erection or alteration of scaffolds having regard to the purpose or purposes for which the scaffold is designed at the time of erection or alteration; and such employer, who erects, installs, works or uses any plant or equipment to which any of the provisions of these rules apply, shall erect, install, work or use such plant or equipment in a manner which complies with those operations.
- Where a contractor, who is undertaking any of the operations or works to which these rules apply, appoints any artisan, tradesman or other person to perform any work or services under a contract for services, it shall be the duty of the contractor to comply with such of the requirements of these rules as affect that artisan, tradesman or other person and for this purpose any reference in these rules to an employee shall include a reference to such artisan, tradesman or other person and the contractor shall be deemed to be his employer.
- It shall be the duty of every employee to comply with the requirements of such of these rules as are related to the performance of or the refraining from an act by him and to co-operate in carrying out these rules.
- It shall be the duty of every employer not to permit an employee to do anything not in accordance with the generally accepted principles of standard safe operating practices connected with building and other construction work as specified by the Central Government.
- No employee shall do anything which is not in accordance with the generally accepted principles of standard safe operating practices connected with building and other construction work as specified by the Central Government.



- No person related with any building and other construction work shall wilfully do any act which may cause injury to himself or to others
- It shall be the duty of every employer not to allow lifting appliance, lifting gear, lifting device, transport equipment, vehicles or other device or equipment to be used by the building workers which does not comply with the provisions given in the rules.
- It shall be the duty of the employer to 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 polluted atmosphere and at the same time be easily accessible to the building workers.
- It shall be the duty of the employer to abide by the dates fixed and notified by him for payment of wages for a period in accordance with these rules and no change in such dates and such periods shall be effected without notice to the building workers and the inspector. The employer shall ensure timely payment of wages as specified under these rules and at the place and time notified by him. Where the employer is a contractor, he shall ensure that the wages of the building workers are paid in the presence of a representative of the employer of establishment or owner of premises from whom he has taken work on contract and obtain signatures of such representative in token of having witnessed the payment of wages.
- It shall be the duty of the employer to ensure that the lifting appliance, lifting gear, earth moving equipment, transport equipment or vehicles used in the building or other construction work undertaken by him conforms to the requirements relating to testing, examination and inspection of such equipment as provided under these rules. It shall be the duty of every person in the service of the government or any local or other public authority to comply with the requirements relating to him given in these rules.

### **Building and Other Construction Workers' Welfare Cess Act, 1996 (No. 28 of 1996)**

**Purpose and Object:** It is an Act to provide for the levy and collection of cess of the cost of construction incurred by employers with a view to augmenting the resources of the Building and Other Construction workers' Welfare Boards constituted under the Building and Other Construction workers' (Regulation of Employment and Conditions of Service) Act 1996.



The Act empowers the central Government to determine the rate at which the cess is to be levied and collected (not exceeding 2 per cent but not less than 1 per cent).

**Applicability:** It extends to the whole of India.

**Eligibility:** Registered building workers.

**Procedure for payment of Cess**

- Cess shall be paid by an employer within 30 days of completion of construction project or within 30 days of the date on which assessment of cess payable is finalized, whichever is earlier.
  - In case of Government departments or Public Sector Undertakings – the cess shall be deducted from the bills payable to the contractor and deposited in the account of Board. The responsibility for deduction of cess in case of Government Departments is on the Head of the Department and in case of Local Authority the CEO of such authority.
  - In case of private construction (i.e. establishments other than Government or Public Sector Undertaking)
    - i. Where the approval of the construction work by a local authority is required, every application for such approval shall be accompanied by a cross demand draft in favour of the board for an amount of cess payable on the estimated cost of construction. The local authority shall not approve the proposal for construction if cess amount is not deposited in the manner as described.
    - ii. Where the duration of the project or construction work exceed one year cess shall be paid within 30 days of completion of one year from the date of commencement of work and every year thereafter on the cost of construction incurred during the relevant period.

**Purpose and Object:** An Act to provide for the social security and welfare of unorganized workers and for other matters connected therewith or incidental thereto.

**Applicability:** It extends to the whole of India.

**Benefits:** Under this act, the Central Government can formulate and notify, from time to time, suitable welfare schemes for unorganized workers on



matters relating to life and disability cover, health and maternity benefits and old age protection. At the same time, the State Government may formulate schemes for unorganized workers, including schemes relating to provident fund, employment injury benefits, housing, educational schemes for children, skill upgradation of workers, funeral assistance; and old age homes.

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