

MIGRATION AND POVERTY: AN INDIAN REALITY

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Introduction:

Migration is a state of life where a person or groups of persons travel from one place to another in search of livelihood. Broadly, two categories of people migrate, (1) The well offs, in search of better education, employment, favourable living conditions which suit their livelihoods; (2) The poor, who are often forced to migrate due to extreme conditions such as hunger and starvation due to poverty, lack of resources etc... The migration undertaken by the second category of people is the hardest. People are forced to migrate due to various compelling factors.

Natural calamities like floods and draughts always disrupt the lives of the poor people more than anybody else. They force the poor to migrate to other places in search of livelihood. Draught makes the landless labourers lives miserable. Our Governments claim that, farmers are the backbone of our Nation, but they could not even evolve a proper water resources management policy for utilisation, conservation and development of water resources like rivers, tanks, rain water, wells etc... for the common good. Though draught is considered to be a natural disaster, we should not forget that it is a result of our indiscriminate cutting of trees everywhere in the name of development; cultivation of akeshia, popularly known as Malaysian Teak and eucalyptus, which sucks and dries up water resources from very deep, in the name of aforestation. Indiscriminate digging of very deep bore wells for pumping of water resources also contributed to the depletion of under-ground water level.

Another important reason for migration is that of land acquisition. When thousands of acres of lands are acquired for the establishment of an industry, in the name of public purpose, the farmers who own and cultivate their land and also the landless labourers who work in their lands, not only lose their lands but also their livelihoods. The Land Acquisition Act awards compensation for the owners of the lands. It is a well known fact that the compensation money has always been considered to be inadequate. The landless labourers, however, are the

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hardest hit. The Act does not award any compensation for loss of work for them. They lose their jobs, their livelihood and are forced to migrate in search of jobs.

Modernisation of agricultural sector is also a reason for migration. By this process the unskilled agricultural labourers are deprived of their employment and thereby deprived of their livelihoods. There needs to be a development of agro-based industries in the places where modernisation of agriculture has taken place, to maintain the balance of people who lose jobs in agriculture, to incorporate them into those industries. However, neither such developments has taken place nor there have been any policies framed in this regard, resulting in the workers who lost jobs, left with no option but to migrate to urban centres in search of jobs and livelihoods.

In this background the paper *Migration and Poverty: An Indian Reality* is written focussing on some of the above mentioned aspects. The first part of the paper deals with the concept of migration and poverty and the way they are inter-related, also the types of migration is looked into with the help of a few examples. The second part of the paper deals with the vulnerable migrant population, for which, migrant women and children who migrate independently are taken up for study and the third part of the paper deals with the steps taken by the Government, both at central and at state levels and civil society organisations, which includes various legislations which were enacted in the interest of migrant labourers and the last part of the paper deals with an international perspective on forced migration.

The issue of Migration is a very vast subject. Hence, it is admitted that all the facets of the subject is not covered in this paper and it only focuses on the above mentioned aspects. A uniform legal citation has been followed throughout the study. This paper adopts doctrinal and socio-legal approaches and the nature of arguments used in this paper are both explanatory as well as prescriptive.

Migration and Poverty: The Inter-Relation

Migration primarily means movement of people from one place to another, which is not casual in nature such as a visit or a tour. It is a kind of pre-emptive move, a survival instinct which drives humans to seek better prospects.¹ Migration can be the cause of poverty as well as be caused by poverty. In a similar fashion, poverty can be alleviated by migration and also

¹ S. Sundari, *Migration as a Livelihood Strategy, A Gender Perspective*, ECONOMIC AND POLITICAL WEEKLY, pp. 2295-2303, 2295 (May 28-June 4, 2005).

migration can intensify the condition of poverty. People tend to migrate due to many factors; important among them are, the assumption of wage differentials between rural and urban areas, underemployment and unemployment in the places of their residence or domicile, hunger caused due to extreme poverty and several other hardships.² At the bottom of it all, is illiteracy. The question then arises as to how literacy is linked to poverty. Why are a vast majority of the Indian population poor? Unemployment is one of the important causes of poverty. How this is caused? Illiteracy is the primary reason for unemployment and hence a reason for poverty. Among the many options available for the rural poor, one is that of migrating to urban centres in search of jobs. When this happens, they successfully continue to deny education to their budding generations, leading to unemployment, poverty and migration. This is a vicious circle which can be broken only by spreading awareness about literacy to the poor. In spite of right to education being a fundamental right of every child, it is denied to a very large section of the silent majority of the Indian population due to various factors that contribute in this regard. Education helps people find employment in a more easier and effective way than any other means, resulting in reduction of poverty and thus reduction of migration.

Types of Migration:

There are two important types of migration. They are (1) Voluntary Migration and (2) Forced Migration. People migrate from both poor and rich households, although the reasons for their migration and the kinds of employment sought are different. People voluntarily migrate for education, in search of jobs or to settle down in some other areas due to favourable conditions and not solely out of poverty. This kind migration is seen mostly in the ‘non-poor’ or ‘well-off’ families. However, the second kind of migration is caused due to the extreme conditions which make living difficult, such as extreme hunger, unemployment resulting in poverty etc...³ This article tries to focus on the second type of migration. It is noted that this type of migration generally happens from rural villages to urban centres and that rural-urban migrants have a greater risk of being below the poverty line than the urban-urban migrants.

² Hugh Waddington and Rachel Sabates-Wheeler, *Working Paper T3 How Does Poverty Affect Migration Choice? A Review of Literature*, THE DEVELOPMENT RESEARCH CENTRE ON MIGRATION, GLOBALISATION AND POVERTY, 4, 5 (December 2005).

³ Amitabh Kundu and Niranjana Sarangi, *Migration, Employment Status and Poverty, An Analysis across Urban Centres*, ECONOMIC AND POLITICAL WEEKLY, pp. 299-306, 299 (January 27, 2007).

People generally take the option of migration as they see it as an instrument of improving the economic well-being and escaping from poverty.⁴

As explained above, voluntary migration is generally seen among people who wish to start off a new life in a favourable set up. However, in forced migration very often the ‘push factor’ works out, where people are forced to leave their place of residence and move out in search of livelihood due to various compelling factors. An example is given here to show how this works. In the Barddhaman district of West Bengal, ever since 1970s the demand for agricultural labourers has increased, resulting in lot of people coming from various places to Barddhaman in search of employment. The people from Murshidabad formed a substantial part of migrant labour force. These people are often landless and lead precarious lives at home. Due to this, they are economically compelled to migrate for part of their earnings.⁵ This is an example to show why people take recourse of seasonal migration. The events unfolded in the village of Jalpara. In this village, almost all houses were earthen built, single storied. People in this village earned their livelihood through agriculture as majority of them were agricultural labourers. It was September 2000, when the monsoon floods hit several districts of West Bengal, even the village of Jalpara, even though expected, were devastating in the damage it wreaked. The impact of this flood differed with different classes of people; the well-off had substantial food grains in store to deal with the post flood scenario; the smaller cultivators had no option but to secure loans on credit. The landless labourers, like those who lived in the village of Jalpara were the ones who were affected the most. They had no money, no food. These villagers were compelled to migrate in search of work. The Government relief for reconstruction of houses was inadequate.⁶ Even the youngest sons of these poor households migrated in search of livelihood. In all 31 people from the village of Jalpara migrated for the first time in their lives in 2000. The things got worse when there was a sudden increase in the number of people seeking work and the decline of work opportunities. The employers saw the helplessness of the labourers as their opportunity. These labourers were paid a very meagre sum of money for their work.⁷

This example of a real event shows how an unexpected flood hits very ‘hard’. In the post-flood scenario the poorest of the poor were hit the hardest. They had neither food stocks nor

⁴*Id.*

⁵ Abdur Rafique, *Floods, Poverty and Seasonal Migration*, ECONOMIC AND POLITICAL WEEKLY, pp. 943-945, 943 (March 8, 2003).

⁶*Id.*, at 943, 944.

⁷ Rafique, *Supra* Note 5 at 945.

the possibility of hiring out their only resource i.e., their own labour. Migration to different places seemed to be one of the options of survival, even though they did not wish to migrate; they were left with no choice, knowing that migration itself involves much insecurity.

Even though the entire migrant population who are forced to migrate due to various hardships are considered to be vulnerable groups, the researcher has identified two other vulnerable groups among the migrant population, i.e., migrant women and children who migrate independently, which is dealt with, here below.

Migrant Women:

According to the National Sample Survey (NSS) of 1999-2000, more than 75% of all migrants in India were women. The number has been increasing at a very large pace, with many of the women going on their own to find service, manufacturing and informal sectors. These migrant women generally get employed in the sex and marriage industries, the maid industry and the home working of migrant and ethnic minority women. It is also to be noted that women make up nearly half of the international migrant population. Also, in India the migrant women outnumber the migrant males.⁸ In this process of migration, women face a lot of problems. Most women are forced to migrate due to various reasons, some of which have already been listed above. Huge numbers of tribal population migrate from Jharkhand, Orissa, Madhya Pradesh and Chhattisgarh seeking employment in the metropolitan cities. In the earlier years, between 1950-1980 the tribal population migrated to the rural areas of West Bengal and Bihar mainly to work as agricultural labourers. But the trend changed post 1980 when the tribals started migrating to bigger cities in search of employment. In recent times, a large number of single women migrate to the cities in search of livelihood. However, these women are often prone to exploitation by not only employers but also by anti-social elements.⁹

A look at the migrant population of Odisha reveals that nearly 63% of Odisha's migrant tribal girls are from Sundargarh district, of which majority of them belong to various Scheduled Tribes. When asked specifically about the problems of these migrant single women, it was found that majority of them got infected with HIV Positive, cancer and other such deadliest diseases. It was also revealed that many tribal girls were duped by relatives and agents and

⁸ Sundari, *Supra* Note 1 at 2295.

⁹ Vikas Jha, *Migration of Orissa's Tribal Women, A New Story of Exploitation*, ECONOMIC AND POLITICAL WEEKLY, pp. 1495-1496, 1495 (April 9, 2005).

then sold to brothels in Delhi and Mumbai at a sum ranging between Rs. 8,000 to 20,000. It was also observed that the migrant girls who returned to their villages found it difficult to get married within the tribal communities, since they were suspected of having contacted HIV Positive, resulting which is the social boycott of the girl and in certain cases, the entire family is subjected to isolation and social exclusion.¹⁰ It appeared as if Sundargarh district had become a wholesale market for buying girls to serve the 'sex bazaars' of the urban centres. Many illiterate tribal girls, ignorant of this harsh reality, are still continuing to migrate to cities in search of livelihood. These girls are left with no option but to face slow and painful death. These practises indeed serve as an example to show the exploitative and brutal character of tribal migration in the state of Odisha. But inspite of all these, it is a tedious task for the tribal families to stop migration, as it is not a matter of choice but often a compulsion to avoid starvation.¹¹

Hence, migration of single women in this regard must be strongly discouraged. Various livelihood options must be explored such as, self help groups, cultivation of vegetables, ginger, stitching centres etc... and also, more importantly, taking necessary steps to implement rigorously the Mahatma Gandhi National Rural Employment Guarantee Scheme in its letter and spirit.

Migrant Children:

Childhood is a foundation of a person's life. Children migrate both with their families and also independently. It is observed that generally, child migrants are overlooked when one talks about migration. Whenever, children are considered, they are usually seen as extra categories in age breakdowns, clubbed with adults as youth or just as another addition to adult migration. This approach fails to recognise that childhood is a biologically distinct and socially constructed experience which is parallel to gender distinctions.¹² Child migration needs to be carefully looked into as it may have long term effects on the lives of the children when they grow up.

There are a lot of difference between children and adults with respect to how they are incorporated in migration. As migrants, children have vulnerabilities distinct from that of

¹⁰*Id.*, at 1495, 1496.

¹¹ Jha, *Supra* Note 9 at 1496.

¹² Arjan de Haan and Shahin Yaqub, *Migration and Poverty, Linkages, Knowledge Gaps and Policy Implications*, UNITED NATIONS RESEARCH INSTITUTE FOR SOCIAL DEVELOPMENT, pp. 1-23, 10 (June 2009).

adults, such as opportunities are limited, age specific responses to incentives and risks, independent access to shelter and other basic services are very limited, children are generally subject to varied legal and social norms, restrictions and expectation as “children”.¹³The United Nations Convention on the Rights of the Child (UNCRC) has come into force on 2 September 1990. This Convention recognises the distinctiveness of childhood. This Convention has been ratified by many countries, including India. Article 2 of the Convention accords under 18 year olds’ claims on governments and societies to promote and protect their development. These rights can be viewed as borderless and portable.¹⁴

Children migrating independently of their families include street children, children working in plantations and agriculture, children who have migrated for domestic service, restaurants, petty trade, children crossing borders independently, majorly without any documents etc... One can presume that children can succeed as migrants as many adult migrants too migrated as children. World Bank in 2007 reported large shares of 12 to 24 year olds in international migration.¹⁵ Economic factors are one of the important reasons for children migrating independently. The actual motive might be more complex. Family poverty emerges as the most important reason as to why the children tend to migrate. Many of them also migrate to support their education. The lucky among those children will be treated in a good manner by their employees, while the unfortunate will often live in the streets because of domestic abuse, hunger and being abandoned by families.¹⁶ These children generally tend to act autonomously in their own interests. Many of them earn their livelihood in this manner, also there exists very high chances of the children being driven to the harmful side of the society thereby converting them to anti-social elements by misleading them to commit unlawful activities, since there will not be any parental or adult supervision on these children who migrate independently. The Government must take active measures to safeguard the interests of these children, particularly to protect the right to life with dignity, which is guaranteed under Article 21 of the Constitution, and in the larger interest of the society, in general, as these children are often being used for anti-social activities by the anti-social elements. The government can rehabilitate these children and provide them education, as it is now a fundamental right, under Article 21 A of the Constitution of every child irrespective of race,

¹³*Id.*, at 10.

¹⁴ *Supra* Note 12 at 10.

¹⁵ *Supra* Note 12 at 10, 11.

¹⁶ *Supra* Note 12 at 12.

caste, sex, creed, religion etc... Once the children are educated, they will be better placed to find employment and this will help in improving the living condition of their families in a more effective manner.

Migration and the Responses of Civil Society:

The problems faced by migrant labourers are numerous. Apart from the ones discussed in the preceding sections, it must also be noted that the migrant labourers are often deprived of ration cards, voters' card and many other basic facilities because they are not conventional vote banks. In April 2009, at Bangalore, a group of pro-migrant workers institutions like the Concerned for Working Children, School Children's Unions, Makkala Panchayats, Karnataka Migrant Workers Union and Gram Panchayat Hakkottaya Andolana, threw light to various problems faced by the migrant labourers and sought the political parties to highlight these issues in the upcoming Lok Sabha elections. These activists demanded the political parties to cast their sight on the rights of the children and wanted them to create structures so that everyone can participate in the governance of this country from the gram sabha to the national level. Voices were also heard demanding the political parties to address the needs of the migrant children who work, conduct poverty mapping, set up schools which cater to the needs of these children, provide free hostel facilities and also create provisions for vocational education for those children above the age of 14 years.¹⁷

It is a well known fact that huge numbers of rural population migrates from Northern parts of Karnataka to the south in search of employment. One such migrant labourer was Shantamma, who was from Gulbarga, a district in North Karnataka, and had migrated to Bangalore, the State capital, almost two decades ago. She complained that the slum in which she lived had no water and that they were not issued ration cards. She attributed the state of her life to the politics and said that since they are not vote banks for any political party, nobody pays attention to them. She even stated that they had to pay Rs.2/- for one pot of water! It was also said by many migrant workers that they had only 'the right to work' and not 'the right to live'.¹⁸

¹⁷ *Migrant Workers Demand Netas' Attention*, THE TIMES OF INDIA (April 7, 2009), available at http://articles.timesofindia.indiatimes.com/2009-04-07/bangalore/28033468_1_migrant-labourers-migrant-workers-ration-cards (Last Visited on 20/04/2016).

¹⁸ *Id.*

In the city of Gurgaon, the migrant labourers have contributed a lot the development of the city. But even, these migrant labourers are not free from various problems like those mentioned above. They do not have any facilities to educate their children. It is difficult to send their children to conventional schools, since most of the times the children will be travelling with their parents from one place to another accompanying their parents, wherever they work on daily wage basis. In this regard, a local NGO, All India Citizens Alliance for Progress and Development (AICAPD) introduced the concept of mobile schooling. These schools will travel with the groups of migrant families and provide school facilities even at night for children who work and also to women. The director, Mr. Sandeep Rajput is of the opinion that over 1,000 migrant students who have never attended school, have registered in a single industrial area around a place called Bhondsi (Haryana).¹⁹ Those children, as he put it, are generally left on their own throughout the day, as both their parents work, making them vulnerable to drug addiction and human trafficking. Because of lack of education, they continue to remain unskilled labourers all their lives and live in extreme poverty. The right to education guaranteed under the RTE Act, 2009, has not made much impact on their lives and the children are left in the same state as they were before. As of April 2011, three mobile schools were set up by the AICAPD and have a large number of migrant children enrolled in the same. The survey conducted by the NGO reveals that there is a need to open 50 more such schools in the city of Gurgaon alone. The employers of the migrant workers should show some interest in this regard and this will fulfil the purpose of educating a large population of migrant children.²⁰

This is a very good initiative taken up by a pro-people organisation. Tasks like these must be appreciated and welcomed. Even though imparting education to children upto the age of 14years, is primarily the duty of the State, the intervention of various civil society organisations, can be considered to be a step forward in fulfilling the Constitutional objective of imparting education to all irrespective of any barriers.

¹⁹ Ruchika Rai, *Mobile Schools for Children of Migrant Workers*, THE TIMES OF INDIA, (April 14, 2011), available at http://articles.timesofindia.indiatimes.com/2011-04-14/gurgaon/29417192_1_mobile-schools-migrant-labourers-migrant-workers, (Last Visited on 20/04/2016).

²⁰*Id.*

Migrant Labourers and Indian Legislations:

The Mahatma Gandhi National Rural Employment Guarantee Act (MNREGA) was passed by the Parliament in August 2005 and it came into effect on 5th September 2005. MNREGA offers a hundred days of work to the unemployed families in rural areas. The adults can apply to this scheme provided they fulfil two vital conditions: (1) they must be living in rural areas; (2) they must be willing to undertake unskilled manual labour for which they will receive minimum wage. The minimum wage differs from one state to another. It is a well known fact that rural-urban migration is a response to diverse economic opportunities across space.²¹ MNREGA aims at providing employment for the people living in the rural areas. The impact of this scheme on the migrant labourers remains the core issue to be looked into.

The earlier days of the implementation of MNREGA saw a large scale acceptance by the rural poor. It was seen as an alternative to migration, since work opportunities were provided to the people in their villages itself. It is a well known fact that migration is often very expensive. Labourers who were earlier migrant workers and now working under the MNREGA, in the process of sharing their experience, remarked that most of their earnings were spent in commuting alone. Allegations of exploitation from the employers were also heard. The hardships they faced, at the time of migration, with no housing facilities and other basic needs, which made most of the migrant labourers to sleep on footpath with their families, was removed by MNREGA to a very large extent by providing employment in the rural areas.²² Migration was forced on these people, but since MNREGA has been put in place, these people now have a respite.

However, the picture is not the same everywhere. It is observed that MNREGA has failed to provide work for a large number of people in the state of Odisha, who are forced to migrate to the neighbouring state of Andhra Pradesh in search of work. More than 500 labourers have already left and more people are likely to follow them, according to the latest figures released by the labour department. The months from February till June are the hardest for the labourers since they have no work, hence they prefer migrating, as the brick kilns and

²¹ Naomi Jacob, *Impact of NREGA on Rural-Urban Migration: Filed survey of Villupuram District, Tamil Nadu*, CENTRE OF CIVIL SOCIETY, 2,3 (2008) available at <http://knowledge.nrega.net/653/1/NREGA-Paper-202.pdf> (Last Visited on 20/04/2016).

²² Kartika Bhatia and Ashish Ranjan, *Alternative to Migration*, FRONTLINE, Vol. 26, No. 01 (January 03-16, 2009), available at <http://www.frontlineonnet.com/fl2601/stories/20090116260100900.htm> (Last Visited on 20/04/2016).

construction sites of Andhra Pradesh give them employment. Despite low payment and physical hardwork, the workers prefer to go outside the state for work. State officials are of the opinion that if an inter-state agreement between the two states is implemented, then the migrant labourers will have better working conditions in other states. Mr. A.C. Padhiary, the Odisha Labour Commissioner, has gone on to say that “all the preparations have been completed and it will be implemented at the earliest. The motive behind entering into such an agreement is to ensure payment of legitimate wages and provide good working condition to migrant labourers.”²³

A seasonal labourer’s life is full of misery. A 17 year old migrant labourer, Mangala Muduli from the village of Dumuripada, Malkangiri district said that, they work in brick kilns with a rate of payment of about Rs. 80 for 1000 bricks and that they work for 12 to 15 hours.²⁴ The food for Work programme (FFWP) was started in the state way back in the year 2000, as a part of Employment Assurance Scheme (EAS). Later, this was expanded to form a part of a wage employment scheme of the state government. MNREGA was implemented subsequently. However, it provided no relief to the migrant labourers from the state of Odisha. This is the plight of the migrant labourers from the state of Odisha.

The Government of India, way back in 1979 has enacted the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, to regulate the employment of Inter State migrant workers and in the quest safeguarding their interests. This Act *inter alia* provides for minimum wages, journey allowance, displacement allowance, residential accommodation, medical facilities, protective clothing etc... This Act applies to an establishment or a contractor, in which 5 or more Inter-state migrant workers are employed. The Act defines who an inter-state migrant workman is, according to which, “*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*” is an inter-state

²³ Chittaranjan Chiranjit, *Odisha: No Work Despite MNREGA in Force*, THE SUNDAY INDIAN (6 February 2012), available at <http://www.thesundayindian.com/en/story/odisha-no-work-despite-mnrega-in-force/254/29621/>(Last Visited on 20/04/2016).

²⁴*Id.*

migrant workman²⁵. The Act mandates registration on the part of the principal employer, by paying a prescribed fee in order to obtain the registration certificate.²⁶

However, there have been many short-comings in the implementation of this Act. In order to examine the provisions of this Act, the problems faced by the migrant population, enforcement machinery, problems in the implementation of the Act, a Tripartite Group was constituted on the recommendation of the Working Group which was constituted by the Indian Labour Conference which was held at New Delhi on 10-21 February 2009. The Report submitted by the group has already been placed before the Indian Labour Conference which was held on 23-24 November 2010. Based on this report, certain amendments are likely to be made to the Act.²⁷

Apart from the above, there are many other safeguards such as the Minimum Wages Act, 1948, the Equal Remuneration Act, 1976 etc... however, these Acts and the provisions there under continue to be disregarded. One of the important reasons for the official disregard of the problem of migration is that it is often inter-state or trans-boundary and inter departmental in nature. Hence, the officials find it easier to ignore the whole issue than find ways and means to tackle the problem.

A huge number of migrant labourers are classified under unorganised labour. It primarily includes those workers who have not been able to organise themselves in pursuit of their common interests due to various constraints. They suffer from various problems, such as the employment is seasonal, there will be lack of a formal employer-employee relationship, absence of social security etc... Several legislations have been passed which have a bearing on the lives of these people, directly or indirectly. Some of them are the Workmen's Compensation Act, 1923; the Minimum Wages Act, 1948; the Maternity Benefit Act, 1961; the Contract Labour (Abolition and Prohibition) Act, 1970; also the Unorganised Sector Workers' Social Security Bill, 2007 has been recently passed by both the Houses of the

²⁵ Sec. 2 (e) of The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979.

²⁶*The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 (Central Act w.e.f. 12.06.79)*, DEPARTMENT OF LABOUR, GOVERNMENT OF KARNATAKA, available at <http://labour.kar.nic.in/labour/interstatemig-1979.htm> (Last Visited on 20/04/2016).

²⁷ Anu, *Amendment for The Inter-State Migrant Workmen Act, 1979*, LAWYERS CLUB INDIA available at <http://www.lawyersclubindia.com/news/Amendment-for-inter-State-Migrant-Workmen-Act-1979-12026.asp> (Last Visited on 20/04/2016).

Parliament.²⁸ A large number of migrant population works as construction workers. The Sample Survey conducted by National Sample Survey Organisation (NSSO) in 2004-2005 show that about 2.57 crore workers are employed in the Construction activities. For this, the Government has enacted Building and Other Construction Workers (Regulation of Employment & Conditions of Service) Act, 1996; and the Building and Other Construction Workers Welfare (Cess) Act, 1996.²⁹ The 2001 census shows that 314.54 million persons in the country have changed their place of residence. Out of this, 29.90 million, which constitutes 9%, have left for work. As stated earlier, the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 still continues to be one of the primary legislations aimed at safeguarding the interests of the migrant people. The Act provides for issuing Pass-Book to every inter-state migrant workman with full details, payment of displacement allowance equivalent to 50% of monthly wages or Rs. 75 whichever is higher, payment of journey allowance including payment of wages during of the period of journey, suitable residential accommodation, medical facilities and protective clothing, payment of wages, equal pay for equal work irrespective of sex etc...³⁰ The problem faced during the implementation of this Act is already discussed earlier.

The problem of migration, it is said, can be checked through a multi-dimensional course of action and policies through rural development, provision for improved infrastructural facilities, equitable dispersal of resources to remove regional disparities, employment generation, implementation of land reforms, increased literacy, financial assistance etc. The Governments, both at the Central level and State levels have launched a number of schemes directing to generate better employment opportunities. Some of them are, Swarnjayanti Gram Swarozgar Yojna (SGSY), Pradhan Mantri Gram Sadak Yojana (PMGSY), Sampoorna Gramin Rozgar Yojana (SGRY), National Food for Work Programme (NFFWP), Indra Awas Yojna (IAY), Integrated Wastelands Development Programme (IWDP), Drought Prone Areas Programme (DPAP), Desert Development Programme (DDP) and the most recent being the MNREGA guaranteeing 100 days of employment to labourers who have

²⁸ *Unorganised Labour*, GOVERNMENT OF INDIA, MINISTRY OF LABOUR, 77, 78 available at <http://labour.nic.in/annrep/annrep0809/Chapter-8.pdf> (Last Visited on 20/04/2016).

²⁹*Id.*, at 79.

³⁰*Supra* Note 28 at 80.

registered their names under the scheme of rural households, which has already been discussed earlier.³¹

But inspite of all these efforts being made by Government and other agencies, the migration has neither been stopped nor provides any such clue. The journey of migration along with poverty goes on without any solution at sight.

Forced Migration and the Refugee Regime: An International Perspective

*“More and more people are on the move today compared to any other point in human history. In 2013, the United Nations estimated that there were 232 million international migrants globally, nearly half of whom were women.”*³²

Around 42 million migrants, as per the United Nations High Commissioner for Refugees (UNHCR), have been forced to leave their homes and seek shelter someplace else because of conflict and repression.³³ However, the scale of migration today is much larger than what has been anticipated by the UNHCR, since; migration has many forms and can take place because of varied reasons.³⁴ Today, people are forced to leave their homes because of reasons such as, “persecution, human rights violations, repression, conflict, natural and human made disasters, and environmental hazards etc”.³⁵ In most cases, people choose to leave, in order to avoid life threatening situations, though, generally, people are forcefully driven out of their homes either by governments or insurgent groups in order to bring about an abrupt shift in the ethnic, religious, or any other composition of a particular area.³⁶ Note that, people who fall into the category of forced migrants include persons who cross international borders in search of refuge in addition to those who have been internally displaced. Those who cross international borders are designated as ‘refugees’³⁷ or ‘international migrants’ whereas those

³¹ *Supra* Note 28 at 80.

³² *Migration, refugees and displacement*, UNITED NATIONS DEVELOPMENT PROGRAMME, available at <http://www.undp.org/content/undp/en/home/ourwork/sustainable-development/development-planning-and-inclusive-sustainable-growth/migration-refugees-and-displacement.html> (Last Visited on 20/04/2016).

³³ Susan Martin, *Forced Migration, the Refugee Regime and the Responsibility to Protect*, GLOBAL RESPONSIBILITY TO PROTECT, pp. 38-53, 39 (2010).

³⁴ Arthur C. Helton and Eliana Jacobs, *What is Forced Migration?* GEORGETOWN IMMIGRATION LAW JOURNAL, pp. 521-532, 522 (1999).

³⁵ *Supra* Note 33 at 39.

³⁶ Kathleen Sarah Galbraith, *Moving People: Forced Migration and International Law*, GEORGETOWN IMMIGRATION LAW JOURNAL, pp. 597-616, 598 (1999).

³⁷ The Convention Relating to the Status of Refugees, 1951, art 1 A.

“For the purposes of the present Convention, the term “refugee” shall apply to any person who:

(1) Has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization;

who remain within their national borders are called as ‘internally displaced persons’ or ‘internal migrants’.³⁸ It is essential to bear in mind that, at present, there is no international legal framework to address cross-border movements that take place due to natural disasters, developmental projects or climate change.³⁹ However, the Guiding Principles on Internal Displacement⁴⁰ provides a broader description to the term ‘internally displaced persons’ and even takes into account reasons such as violation of human rights, natural or man-made disasters etc. for the purposes of applicability of the principles.⁴¹ But unlike, the refugee law, the Guiding Principles on Internal Displacement are not legally binding under international law.⁴²

UN Refugee Convention:

The 1951 United Nations Convention relating to the Status of Refugees, and its 1967 Protocol, defines the term ‘refugees’.⁴³ The 1951 Convention provides for an alternative protection for those who had been persecuted by their own State, or who could not claim the protection of their State because of a well-founded fear of persecution. The reason behind this alternative protection has been described by Charles Keely as, “A State is not behaving as a State when people flee or are forced out because of racial, ethnic, religious or political reasons.”⁴⁴ Now, coming to the protection of refugees, note that, under the 1951 Convention, the most fundamental principle in relation to refugee protection is with regard to the obligation of States to refrain from forcibly returning (*refoulement*) refugees to States in which

Decisions of non-eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfill the conditions of paragraph 2 of this section;

(2) As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it. In the case of a person who has more than one nationality, the term “the country of his nationality” shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.”

³⁸*Supra* Note 33 at 42.

³⁹*Id.*, at 43.

⁴⁰Guiding Principles on Internal Displacement - “For the purposes of these Principles, internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.”

⁴¹*Id.*

⁴²*Supra* Note 33 at 43.

⁴³ The Convention Relating to the Status of Refugees, 1951, art 1 A.

⁴⁴*Supra* Note 33 at 47.

their life or freedom is threatened.⁴⁵ The principle of *non-refoulement* under Article 33 is also said to have already achieved the status of customary international law in that it is reflective of State practice and recognized by States as legally binding.⁴⁶ The Convention also mentions of the rights of the refugees who have been taken into the territory of another country. Rights such as freedom of religion and access to court of law are said to be guaranteed to the refugees. Lawfully residing refugees in another country are also guaranteed rights in relation to employment, property, elementary public education, and housing. Besides, as per the Convention, discrimination on the basis of race, religion, and country of origin is strictly prohibited against persons seeking refuge.⁴⁷

Internal Displacement:

As stated above, internally displaced persons, those who have not yet crossed a national border, do not fall under the ambit of the international refugee treaties. There is no universal instrument specifically addressing the plight of internally displaced persons, however, the Guiding Principles on Internal Displacement as a document sets out to fill in the gaps in this area of law. While these Guiding Principles do not constitute a binding instrument, they have received large support from the international community.⁴⁸

Conclusion:

Poverty is the outcome of mismanagement of human resources. It is often a cause of migration. Migration, on the other hand, brings not only misery but also humiliation, ill-treatment and denial of right to life with dignity. It snatches the dignity from the labourers, which otherwise they would have enjoyed in their places of habitation, though with all limitations. It is found that since women and children are more vulnerable, they are more affected. We, as a nation, never tried to understand that every child is born equal and has the potential and talent, which could be used for the betterment of the nation, if that child is properly nurtured and educated. It is also observed that the slums are a product of migration. The children living in slums are often easy targets for anti-social elements and hence they are included into their anti-social activities.

⁴⁵ The Convention Relating to the Status of Refugees, 1951, art 33.

⁴⁶ Arthur C. Helton, *The Legal Dimensions of Preventing Forced Migration*, AMERICAN SOCIETY OF INTERNATIONAL LAW PROCEEDINGS, pp. 546-548, 546 (1996).

⁴⁷ *Supra* Note 33 at 48.

⁴⁸ *Supra* Note 46 at 547.

Indian Constitution under Article 39(f) mandates the State 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. Also, under Article 41, the State is obligated, within the limits of its economic capacities 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. Also, Article 45 says that the State shall endeavour to provide early childhood care and education for all children upto the age of 6 years and Article 46 mandates the State to promote with special care, the educational and economic interests of the weaker sections of the people and in particular, of the Scheduled Castes and Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation. Now, in 2002, the Parliament has incorporated Article 21A into the Constitution guaranteeing children of the age of 6 to 14 years to have free and compulsory education.

In spite of these Constitutional provisions and a number of legislations, rules, government orders, circulars issued for the betterment of migrant population, the plight of the migrants and their children have not drastically been changed. The children of the migrant labourers are still being denied not only their right to education but also right to childhood, the women are victims of all kinds of exploitations, harassments and humiliations. They are considered to be second class citizens even by the educated class of people. Unless or until we change the adopted pattern of development for years, in all spheres of national life and make all developments human centric, migration cannot be stopped and the prevailing pathetic condition of the migrants, their children and families continue to be present in different forms.
