

Report
National Workshop on
Social Security Rights and Statutory Provisions for Migrant Workers

A National Workshop to discuss the statutory provisions regarding conditions of service of migrant workers and their social security rights was held at Jaipur on 13th September 2014 by Social Security Association of India (SSAI) in collaboration with Friedrich Ebert Stiftung, New Delhi and Rajasthan Chapter of SSAI in association with Rajasthan State Productivity Council. The Workshop was attended by about 45 participants invited from the trade union organisations, employers' organisations, distinguished NGOs and social security experts and members of Jaipur Chapter.

2. Dr. K.L.Jain, President, Rajasthan State Productivity Council, was the Chief Guest and Dr. Pravin Sinha, was the Special Guest of Honour. The key note address on the theme of the workshop was delivered by Justice Mr.Pana Chand Jain (Retired), President, Rajasthan Chapter of SSAI .

3. Shri N.Vyas, Treasurer, SSAI, welcoming the participants presented a broad perspective of Inter-state Migrant Workers' Act of 1979 and invited the attention of the participants to discuss ways and means of strengthening the legal provisions for the betterment of the migrant workers. He suggested that the workshop might consider suggesting creation of a channel of communication with Director General, Labour

Welfare, Govt of India to monitor the implementation of the provisions of the Act. He recalled in this regard the famous statement of Karl Marx that society should ensure that no one was too rich or too poor. That is the essence of equity in society which alone can ensure peace and tranquility.

4. Dr. K.L. Jain in his presidential speech recalled the recent initiatives taken by the central government in the area of social protection by enacting Food Security Act to ensure that no citizen should die of hunger. It was also an exemplification of the government policy of inclusive growth, he said. Recently, the government by introducing Jan Dhan Yojana have enabled about four crore citizens to open bank account with fresh deposit amount of Rs 15000 crore. It was a bold step in creating financial inclusiveness in the country. He also hailed the government decision to call upon the Law Commission to remove all obsolete legislations from the statute book within a period of three months. He while enumerating the aforesaid policy initiatives of the government pointed out the absence of a reliable data bank in the area of management of migrant workers which was creating problems in implementing all the provisions of the said Act. He was of the opinion that there was a need for establishing a regulatory body to manage the problem of migrant workers.

5. The workshop was designed to discuss the following issues concerning the conditions of service as provided in the Act, the gaps in

implementation and the reasons thereof, the rights of the workers and the extent to which social security measures were effective. Accordingly, the following nine points were circulated amongst the participants including the speakers for discussion:-

- a. Whether the term “Inter State Migrant Workmen” has not been defined properly in the Act of 79 to cover Inter State Migrant Workmen creating bottlenecks/problems in its implementation for the benefit of those workmen for whom it was enacted?
- b. Whether the provision of licence at the point of origination for recruitment and at the place of destination by the contractor for employment in the State should be done away with? If so, suggest alternate for the same.
- c. Whether the existing provisions from Sec.13 to Sec.19 have failed to safeguard the interest of interstate migrant workers relating to wages, welfare and other facilities and have failed to provide any social security cover for the migrant workers?
- d. Whether the provisions made in Sec.21 for interstate workmen should be deemed in employment from the date of recruitment for the purposes of certain entitlements and whether Sec.22 with regard to resolution of industrial disputes have completely failed to safeguard the interest of interstate Migrant workmen?
- e. Whether there is no proper machinery to implement the provisions of the Act or whether the provisions are such as are impractical to

provide any relief to the migrant workmen? If so, what are the remedial measures?

f. Whether the migrant workmen covered under EPF Act and/or ESI Act are availing the benefits? If not, whether for these unorganized specific social security cover should be designed under the aegis of Social Security Act, 2008.

g. Ways and means of overcoming the shortcomings of the Act.

h. Whether MGNEG Act,2005 and Food Security Act,2013 have cast positive effect on the migrant workers?

i. Would this workshop consider recommending specific provision in the Act of 1979 to provide for legal aid for creating awareness among the workmen?

6. These issues were discussed in the Workshop in two technical sessions . The first session opened with a critical appraisal of the provisions of the Act of 1979 by none less than Shri Brijendra Samwaria, former Chief Labour Commissioner, Govt. of India, Ministry of Labour. Shri Samwaria presented the problems confronting the State Labour Commissioners in implementing the various provisions of the Act by referring to some cases reported in the media in recent times. In one such case, migrant workers while in transit from Odisha to Andhra Pradesh 10 out of that group of 12 had fled away and the remaining two were persecuted by the contractor chopping off their hands. Secondly, in Chennai the media reported about collapsing of a building under

construction causing casualty of 50 workers but the compensation/relief as enumerated under the Act for such incidences was not made available to the workers. He also referred to the plight of the migrant workers in the CWG 2010 who were denied the benefit of minimum wages and basic facilities of living and shelter. He described in details the pitiable situation in the matter of their living conditions, medical care and provision of ration. He talked of the exploitation of Adivasi (tribal) workers and predicaments of the marble workers of Rajasthan who are found working in every part of the country. In conclusion, he was of the view that for tackling the problem of the migrant workers what was necessary was to redefine the management policy of the government with respect to the migrant workers. He spoke of the MOU signed between the State of Odisha and Govt. of Andhra Pradesh ensuring protection of the workers interest at the destination state and exhorted that other States also should emulate this model to ensure that the benefits enshrined under the law for the migrant workers were implemented both in letter and spirit.

7. Shri Subhas Bhatnagar, Secretary General, National Organisation for Unorganised Workers and Coordinator, National Campaign Committee for Central Legislation on Construction Workers spoke on the implementation of the provisions of the Act of 1979. He explained in details the short comings in the Act of 1979 which were standing in the way of betterment of the plight of these workers. He regretted that no

sincere efforts were being made to implement the provisions of this Act. He also expressed his disappointment over the fact that the building construction welfare boards were not spending their funds appropriately and judiciously for the welfare of the workers and that although welfare boards had been set up in all the States on tripartite basis but benefits did not percolate down to the workers. The boards in most of the States were functioning under the tutelage of the respective Labour Departments. Not only were those, these boards were not implementing even the directives issued by the Supreme Court for the true welfare of the migrant workers. He demanded that there should be equal wage for all workers including migrant workers undertaking same or similar works

8. Prof. S.C. Shrivastava presented a critical evaluation of the Act of 1979 with the following suggestions for its easy and simple implementation. He stated that the registration of workers, application for licence should be converted into an on line facility to cut down on time lag as well as eliminating red tapes. Referring to the provision of Section 17 of the Act he suggested that payment of wages should be done electronically. With regard to Sec.20 (3) he pointed out that Supreme Court having found this provision redundant, it should go out of the statute book. Regarding provision of penalty he suggested that minimum penalty should be provided for in the Act itself. He further suggested that for the purpose of taking cognizance of default by a contractor the

Inspector or the NGO or the trade union or the civil society organisations under Sec 29 of the Act, the present time limit of 3 months should be extended 6 months' time and the time limit of 6 months under the proviso of that Section to 9 months. He further suggested that to compel the contractor to issue letter of appointment to a migrant worker the burden of proof in the case of dispute relating to appointment should shift to the employer/contractor so far as law under this Act is concerned. Regarding the present tendency of a contractor to engage sub-contractor(s) to evade the arms of law, the Act should be amended to recognize sub-contractor as an entity responsible for implementation of the provisions of the Act and thereby thwart any attempt to evade the provisions of law. He reiterated that migrant workers were entitled to the benefit of Employees' Compensation Act after the recent amendment of the said Act. Similarly, the migrant workers were entitled to Maternity Benefits Act as a matter of right of the women workers as upheld by the Supreme Court.

9. Shri Michel Dias, Advocate, Supreme Court of India spoke of his experience on the implementation of the Act. He opened his speech with the statement that the Indian economy having been opened up & market driven there had been paradigm shift in the dynamics of the job market from what was prevailing earlier. There was need to have a relook at our legislations to protect the interest of the workers as well as of the employers. Because of the global nature of the present trade and

industry, the provisions of present Act of 1979 could not be limited to India only: it needs to be revisited and should cover international migrant workers- for those workers going abroad or for those coming to India. He also pointed out that the migrant workers were employed in projects and not in regular establishments. Hence the nature of their service being different their service conditions could not be governed by laws meant for the workers of the regular establishments. The policy makers should level up this basic incongruity in law making.

10. He was of the view that the present Act of 1979 did not have any ambiguity in defining the role and activities of the different partners but the problems were developing as the system was being operated by the mafias in the employment sector. He also expressed the view that the Labour machinery is not effective enough. Local government officials should be involved in the identification of migrant labour and their families. He called for the simplification of labour laws. He was of the view that for migrant workers central government should be declared the appropriate government as that would enable uniform implementation of the provisions of the Act. He felt that the system of registration of workers and licensing under the Act were very good provisions but the question was who would benefit out of such processes. That called for reappraisal of the system, the way it was functioning.

11. Regarding wage payment he was of the view that all payments should be done electronically through banks and post offices. He referred

to the decision of the Delhi government for setting up labour web site for this purpose. Such a step would ensure transparency. He also advocated that migrant workers should get higher than minimum wages because they travel from one State to another in discharge of their avocation. Therefore, a separate schedule should be framed for this purpose under the Minimum Wages Act.

12. He supported the view that calculation of labour cost for the purpose of tender should be made on minimum wage plus cost of social security and each bidder should have to render a certificate to that effect while submitting the tender.

13. For better management of migrant workers employer—contractors relationship, he was opposed to the idea of applicability of ID Act 1947 for dispute resolution. In stead he suggested that an alternative system of dispute resolution should be developed for this sector. He also felt that there was need to spruce up the implementation machinery. He insisted that the system of one window clearance should also be introduced to mitigate the hardship of the employers.

14. Shri Dhanraj Sharma, Additional Labour Commissioner, Rajasthan gave an overview of the Act as it operates in Rajasthan. He stated that the mindset of the employers was standing in the way of proper implementation of the provisions of the Act. He was of the view that development was not taking place with a human face. For example, he cited how wage settled for Rs.4000/- for an employee was being

divided into several parts taking basic wages to Rs.800/- plus DA for Rs.200/- and the rest of the amount was shown as allowances just to avoid social security liabilities on the entire amount of wages of the employee. He suggested one way out of this dubious method of wage calculation by making principal employer responsible for payment of wages of workers of the contractor. Secondly, he felt that the migrant workers should be allowed to form union which could act as protective armour for the workers in getting their proper dues.

15. Shri B.K. Sahoo, former Insurance Commissioner, ESIC, made a presentation on social security requirements for the migrant workers. In his presentation he stressed upon the importance of scheme coverage, making provision for health care and providing unemployment allowance as guarantee for securing a viable safety net. He further stated that for providing seamless access to social protection schemes the system of portability of accounts should be introduced emulating the system put in place by RSBY, by EPFO & E.S.I.C. He also advocated the need for granting migrant workers access to public distribution system (PDS) for meeting their basic food requirement , making proper facility for safe drinking water, offering first aid medical facility at the workplaces & legal machinery to enforce their rights/ entitlements. Recalling the contribution of the trade unions and NGOs in organizing migrant workers at ship breaking yards in Mumbai & at Along in Gujarat he felt that these organisations could play effective role in this regard to the problems affecting migrant workers. He was of the view that availability of social security benefits would lead to better productivity and business development. He concluded by quoting what Mahatma Gandhi, the

Father of the Nation, had said that **“Let us do something which can wipe out tears of the poor and the needy.”**

16. The trade union leaders participating in the deliberations made the following points for redeeming the condition of the migrant workers. Shri Babulal Sharma of the INTUC felt that ISMLA did not have enough provision for enforcing liability of the principal employers as such contractors got away without paying penalty on law violations. Com. Changani of the AITUC felt that the focus ought to be shifted to checking unemployment and precarious nature of work. He expressed the view that the State Labour Departments should be adequately staffed so as to enable them to effectively inspect the establishments, in particular stone quarries. Bro. Guman Singh, President of the National Federation of Indian Railways raised the issue of employment insecurity and non-availability of details on migrant workers. It was further expressed that a national wage policy should be formulated and that there should be on minimum wages for the whole nation. Incidentally one of the ten demands of the Central Trade Union included Rs. 15,000 as national minimum wage.

17. Dr. Sinha questioned the very basis for amendment of ISMLA. According to him, the Act had not been given chance to prove its worthiness. Any amendment to the law would meet the same fate if the reasons behind ineffective enforcement of the Act were not identified and eradicated. At that point, Dr. Srivastava informed the participants that the NLLA had undertaken an exercise to bring out an Indian labour Code.

18. While concluding, Mr. B. N. Som stressed that the loopholes in the Act must be removed and for this administrative capacity of the labour department both at the centre as at the State level must be enhanced. He also apprised the participants that several momentous suggestions had come out during the course of discussions which all would be forwarded to the Director General, Labour Welfare, Ministry of Labour and Employment, Govt of India as well as to the State Govts for taking appropriate actions at their level as deem fit and proper. Justice Jain felt that the focus should be on migrant workers' concerns and not on the provisions of the law. The laws should be used as enabling and not limiting instrument.

B.N.Som
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