

RIGHTS OF MIGRANT CONSTRUCTION WORKERS IN MANGALORE: A REALITY CHECK

Ashok Antony D'Souza

Abstract

Migrants are understood to be a highly vulnerable section of any society. Migrant workers employed in construction industry in India face untold misery in terms of hazardous working conditions, unhygienic living conditions, social isolation and lack of employment and social security. There are about twenty thousand migrants in Mangalore of whom a large population is employed in construction industry. The rights of these workers are rampantly violated as they lack the education or organisation to get conscientised regarding their dignity and rights. This paper provides a theoretical background for the discussion of human rights' violations of migrant construction workers, puts forth specific observations regarding the nature of violations, and proposes certain measures to be taken by governmental and non-governmental agencies. It is primarily based on the experiences of the author by way of his social work initiatives among the workers and also the studies undertaken by social work students as part of their academic requirement.

INTRODUCTION

The scale and complexity of migration in India today are beyond any previous experience (Sekar 1997). The urban-centric development, growing agrarian crisis, and the latest mushrooming of Special Economic Zones (SEZs) could be seen as the major reasons for the exodus of people

from rural India towards towns and cities. Studies have shown that in some parts of India, three out of four households include a migrant (Acharya 1986).

Life of migrants often involves long working hours, poor living and working conditions, social isolation and poor access to basic amenities (Kundu 2000). Migration is now seen as a priority issue equal in political weight to other major global challenges such as the environment, population growth and economic imbalances between regions. Despite this being the case, labour migration has rarely been reliably studied (Hesselberg 2002).

This paper on the issue of migration is based primarily on the personal observation of the author and the research studies done by social work educational institutions and students of Mangalore. It purports to explore the nature, causes and possible solutions to human rights' violation of migrant construction workers in the city of Mangalore.

CONCEPT AND IMPACT OF MIGRATION

Migration is generally known as the movement of people from one place to another for permanent or temporary residence for a substantial period of time. The Census of India defines migration solely by the difference in the place of birth and place of enumeration. Accordingly, a person enumerated in a place, other than the village or town where he/she was born, is considered as migrant.

Migration may be viewed as out-migration (movement from a place) or in-migration (movement to a place). Migration may be either internal (within the boundaries of a nation) or international. This paper focuses on internal migration. This type of migration is based on the census definition (i.e., difference in the places of birth and census enumeration).

From the point of view of the factors responsible, migration can also be classified as (i) movement of people to other places in order to improve their life-condition and to explore opportunities for improving their skills and talents and (ii) fleeing of people from a situation of helplessness and lack of resources to meet their ends. While the economic causes involved in the second category of the typical rural-to-urban migration are usually termed as "push" factors in rural areas, the reasons for the other category of migration is termed as "pull" factors of urban areas.

The 'push' factors are those that more or less compel people to leave the rural areas. The important push factors of rural areas are lower land-human ratio, intra-rural inequalities of economic resources, mechanisation of agriculture, low agriculture income, and agricultural unemployment and underemployment. The pressure of population results in lower land-human ratio and accumulation of surplus labour on land. The major reason for rural-to-urban migration is inadequate land and insufficient resources to generate income. The mechanisation of agriculture along with concentration of land in a few hands often leads to the replacement of labour, thereby resulting in movement of labour to cities. The cultivators abandon farming and migrate to the urban areas.

The 'pull' factors refer to those that encourage migration to a particular area. Urban wages are generally higher as compared to rural wages. In the countryside wages are traditionally determined and are low. In contrast, industrial and other construction workers in the cities get better wages. Therefore, 'pull' of relatively higher urban wages is quite strong and a large number of people, particularly the young men and women, keep on migrating to the cities.

There are also push-back factors in migration. The push-back factors play an important role in migration in India. According to certain scholars, adverse living conditions, high unemployment and underemployment rates, and various forms of exploitation act as deterrent to fresh flow of migration from the rural to urban areas.

This paper discusses the second type of migration, wherein people are pushed out of their place of origin on account of poor living conditions there. The people falling under this category are the most impoverished and vulnerable. Earlier studies have shown that it is the poor households that resort extensively to migration. More recent studies have reconfirmed that migration is sought as a significant livelihood strategy by the poor households in several regions of India (Mosse *et al.* 2002).

The effects of rural-to-urban migration on the urban economy as a whole have resulted in rapid growth of slums. Similarly, mushrooming of sub-urban settlements with rural migrants has become a significant phenomenon even in small towns. In spite of the poor living condition in these suburban settlements and slums, the influx of rural people to urban

areas has been continuing. As they have been pushed out of the rural areas to seek livelihood in the urban areas they are forced to accept any living and wage conditions, even if they are in violation of their human rights.

HUMAN RIGHTS OF MIGRANT WORKERS

Human rights are said to be universal, indivisible, interconnected and interdependent. In 1998, the International Labour Organisation (ILO) codified eight of its Conventions into a Declaration on Fundamental Principles and Rights at Work as reflecting fundamental human rights. Elaboration of the human rights pertaining to the migrant labourers is contained in the relevant conventions of the ILO (2008a, 2008b). These Conventions recognise several human rights of migrant workers. The major ones include the human right to:

- Work and receive wages that contribute to an adequate standard of living,
- Freedom from discrimination based on race, national or ethnic origin, sex, religion or any other status, in all aspects of work, including in hiring, conditions of work and promotion, and in access to housing, health care and basic services,
- Equality before the law and equal protection of the law, particularly in regard to human rights and labour legislation, regardless of a migrant's legal status,
- Equal pay for equal work,
- Freedom from forced labour,
- Protection against arbitrary expulsion from the state of employment,
- Return home if the migrant wishes,
- A standard of living adequate for the health and well-being of the migrant worker and his or her family,
- Safe working conditions and a clean and safe working environment,
- Reasonable limitation of working hours, rest and leisure,
- Freedom of association and to join a trade union,
- Freedom from sexual harassment in the workplace,

- Protection during pregnancy from work proven to be harmful,
- Protection for the child from economic exploitation and from any work that may be hazardous to his or her well-being and development,
- Education for the children, and
- Reunification with the family.

It is anybody's guess how many of these human rights, to what extent, are really enjoyed by the migrant labourers in India. Many of these human rights are protected with various legislative provisions in India.

LEGAL AND WELFARE MEASURES OF THE INDIAN GOVERNMENT

The Indian Constitution contains basic provisions relating to the conditions of employment, non-discrimination, right to work etc. The relevant clauses of the Constitution are Article 23(1), Article 39, Article 42, and Article 43. India is also a member of the ILO and has ratified many of its conventions. These provisions and commitments, along with pressure from workers' organisations, have found expression in Indian labour laws and policies.

The existing labour laws relating to social security like the Employees Provident Fund Act, 1952, the Employees State Insurance Act, 1948 and the Payment of Gratuity Act, 1972 are based primarily on the premise of an enduring employer-employee relationship, which is not applicable to construction workers. The other set of labour laws, the Minimum Wages Act, the Equal Remuneration Act, the Contract Labour Act and the Workmen's Compensation Act, which are theoretically applicable to this sector, do not provide any benefit to the workers because of red tapism in labour departments and ineffective implementation. Only a unionised and organised section of workers can ensure even partial implementation of these laws. Experience shows that construction workers have not at all benefited from these laws.

The government has attempted to resolve the conflict by making a distinction between 'organised' and 'unorganised' workers, and envisioning a 'minimum level of protection' to the workers in the unorganised sector. This is against the spirit of the Constitution as well as the labour laws, because

they do not make such a distinction. This approach clearly negates the principle articulated by the ILO that "since the fundamental principles and rights at work and the fundamental Conventions apply to all workers, there should not be a two-tiered system or separate regulatory framework for formal and informal workers ...there should not be a lower level of application of core labour standards for informal workers. In regard to fundamental human rights, violation or non-compliance cannot be excused by poverty or informality" (John 1997).

There are a number of laws in India, which could be applied to protect the rights of construction workers. Many list around 30 legislations, out of which the most relevant laws relating to migrant construction workers are 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, and the Building and Other Construction Workers Welfare Cess Act, 1996.

The Inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) Act of 1979 lays out the employment conditions for inter-state migrant workers who are employed through contractors or middlemen in establishments, which employ 5 or more such workmen per day. Its recommendations include passbooks for workers with payment details, provision for residential facilities, medical aid, adherence to minimum wage, resolution of industrial disputes and other stipulations. The responsibility for enforcement of the Act in establishments where the central government is the appropriate authority lies with the office of the Chief Labour Commissioner (Central) and for the establishments located under the states' sphere lies with the respective state governments.

The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 and the Building and Other Construction Workers' Welfare Cess Act, 1996 aim 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 during the preceding year, ten or more workers. The exception made is only in respect of residential houses for own purpose constructed with a cost not exceeding Rs.10 lakh (one lakh is 100000) and such other activities to which the provisions of Factories Act, 1948 and Mines Act, 1952 apply.

The Act provides for an advisory committee at the central and the state levels with the function to advise the governments concerned on such matters arising out of the administration of the Act as may be referred to it. There is also a provision for registration of each establishment within a period of sixty days from the commencement of work to ensure that there are no malpractices and to discourage non-compliance of law by circumventing it. Building workers are expected to be registered as beneficiaries under this Act.

The Act also provides for constituting a construction workers' welfare board by every state government to exercise the powers conferred on, and perform the functions assigned to, it under the Act. It stipulates immediate assistance in case of accidents, old age pension, loans for construction of house, premium for group insurance, financial assistance for education and medical expenses, maternity benefits etc. It also proposes health and safety measures for the construction workers in conformity with the ILO Convention No.167 concerning safety and health in construction revising the Safety Provisions (Building) Convention of 1937.

The Act provides for constitution of welfare boards to raise the funds for various welfare measures. The major source of the funds is the collection of cess at rates not exceeding 2 per cent of the cost of construction incurred by an employer. The collection of funds and administration of the welfare boards is the responsibility of the concerned state governments.

The most glaring weakness of these two laws dealing with construction workers is the conception of construction workers' welfare board. The provision of a tripartite workers' board, which regulates the employment of workers, supervises their conditions of service and enforces the welfare and other obligations, was central to the proposed bill. The proposal envisaged constitution of labour boards to have offices at various grassroots levels like districts and major construction project sites to oversee the administration of the scheme. The government, however, did not accept this important proposal and rather opted for a lame duck welfare board. The board, named as Construction Workers' Welfare Board, has very little power in the Act passed by the Parliament.

The building workers, in this law, do not include any such person "who, being employed in a supervisory capacity, draws wages exceeding Rs.1600 per menses or exercises, either by the nature of the duties attached to the office or by reason of the powers rested in him, functions mainly of a

managerial nature." This provision excludes a large number of those who work as supervisors but, by all considerations, are construction workers. Also, while defining 'establishment' which would have to pay welfare cess compulsorily, the law excludes those constructions where construction cost is not more than Rs.10 lakh. This provision would result in considerable diminution of the cess that can be collected. Another provision of this law gives power to the centre to exempt any employer or class of employers in a state where "such cess is already levied and payable under any corresponding law in force in that state". This provision can be used to exempt certain establishments from paying the minimum cess amount not less than 1 per cent of the construction cost, as per the provision of this law.

In sum, it could be observed that the labour laws aiming to protect migrant workers in construction industry are either formulated defectively or have remained largely on paper (Singh 2000). In the case of the 1979 Act, only a few contractors have taken licenses and very few enterprises employing inter-state migrant workers have been registered under the Act.

PLIGHT OF MIGRANT WORKERS IN THE CONSTRUCTION INDUSTRY

Construction industry is labour-intensive. In 1993-94, construction workers constituted 3.2 per cent of the total workforce (see NSSO Survey, 1993-94). Out of the 39.7 crore (one crore is 10000000) workers in the country in 1993-94, 36.9 crore were in the unorganised sector. Within the unorganised sector, 1.7 crore workers were employed in the construction industry and they were the second largest contributors to the Gross Domestic Product after agriculture.

Construction industry is a highly heterogeneous field. The operations therein range from building individual homes or carrying out minor repairs to them on the one end of the spectrum to large infrastructure projects such as fly-overs and sub-ways carried out by the government Public Works Department by itself or through sub-contracts on the other end. However, whoever the employer is, the workers continue to be exploited, with little or no regard for the working and safety conditions.

The labour market in the construction industry is a buyer's market where the contractor rules the roost. No agreement is reached while taking contract workers. Daily wage for these casual labourers is fixed in an arbitrary

manner and it fluctuates from season to season, worker to worker and employer to employer. In most of the cases the wages are lower than the minimum wages fixed by the government. Most often contractors use ethnic, skill and gender divisions among workers to take maximum advantage. It has also been observed that skilled labourers, at times, act as petty contractors hiring helpers (John 1997).

Various studies have shown that construction industry attracts workers who migrate from rural areas to urban areas because of poverty, drought and lack of employment. Most of these migrants come into urban centres without any direct intention of joining a construction firm. However, they get attracted to construction industry because of its ability to absorb unskilled labour. Thus employment in a construction firm acts as a mid-way between agriculture and industry in terms of the mobility of workers.

The workers in construction industry have no direct relationship with the principal employer. At times they do not even know for whom they are working. The industry often operates in a mafia-like fashion. There often exists a nexus between builders, contractors, police, and administrative and political functionaries. Workers, the most susceptible element in the industry, are the ones who face the continued might of this nexus, mostly evident in the instances of non-payment of wages and accident relief, forcible relocation or other similar labour disputes.

HUMAN RIGHTS' PROFILE OF THE MIGRANT CONSTRUCTION WORKERS IN MANGALORE

Mangalore is the headquarters of Dakshina Kannada district, the largest urban coastal centre of the state of Karnataka and the fourth largest city of the state. In the recent past the city has been developing very fast in the fields of education, commerce and industry. There are about 20,000 migrant workers in Mangalore hailing from the drought-prone districts of north Karnataka and from other states like Tamil Nadu, Andhra Pradesh, Orissa, West Bengal and Bihar. Most of them are employed in the construction industry as skilled, semi-skilled and unskilled workers.

There are two types of migrants in Mangalore: those who have settled in Mangalore for a long time and the temporary migrants who have

migrated to the city only recently. Many of them are living in temporary settlements by the roadside. The finding of the study of Harsha (2007) shows that majority (64%) of the migrants in Mangalore have had a relatively short stay of up to four years. As for the rest, according to this study, 22 per cent of the migrants have been staying in Mangalore for 5-8 years and 14 per cent over 8 years. They live in different places of the city based on the availability of job. This exposes them to different living conditions and cultures, making them confused in finding a single cultural identity. The language, dress, belief and food habit of the migrants differ from those of the local population. This results in social isolation, and at times mockery and humiliation of the migrants by the locals.

The shorter is the stay of the migrants in a particular place, the greater is the risk of the human rights being denied to them. Following is a description of the extent of the realisation of some of the human rights in the case of the migrant construction labourers in the city of Mangalore.

1. The human right to freedom from forced labour: Most of the migrants in Mangalore have come to the city voluntarily in search of work. However, reliable sources say that trucks full of workers from north India arrive in Mangalore in the early hours of the day and the labour contractors and sub-contractors 'buy' the 'hands' that they require through bidding.

Some of the builders house their labour-force in shacks around their sites and provide them with certain allurements like easy access to cheap liquor in order to ensure a regular supply of workforce. Thus, though there is no exercise of 'open' force, there are many subtle forms of force operating to limit the choice and mobility of the migrant construction workers.

2. The human right to work and equal pay for equal work: Migrant men workers in Mangalore are paid between Rs.100 and 125 and women between Rs.80 and 100 for the same kind of work. The study conducted by Harsha (2007) has shown that majority (88%) of the migrants do not have 'regular' work under a single employer and do not get daily employment. Most of the workers need daily payment wages for meeting their basic amenities and food. Hence, if a worker fails to find work on a daily basis he/she finds it difficult to meet even the basic needs.

Migrants come to Mangalore to find better livelihood and save some money to take back to their native places. However, their earnings and

savings are very meagre. They are treated as 'cheap labour' and are forced to put up with long working hours, get little benefits other than wages and, above all, are under-paid. Thus, the employment of the migrant construction workers in Mangalore does not provide them with adequate standard of living and equal pay for equal work.

3. The human right to a standard of living adequate for the health and well-being: One of the main problems experienced by migrant construction workers is that of unhygienic living conditions due to poor housing and dirty surroundings. The study of Harsha (2007) showed that none of the migrant construction workers had houses of their own. Over one third (36%) of them stayed in rented places and almost an equal number (34%) in tents. The remaining 30 per cent lived in places like building under construction or on footpath. Migrant workers generally do not get adequate water for their necessities. Majority of them do not have access to supply of safe drinking water. In the summer, they have to traverse long distances to fetch drinking water.

Most of the migrant workers do not have proper toilet and bathing facilities at the workplace. They have to wait the whole day for the veils of darkness just to fulfil this basic human requirement. This becomes an embarrassing and humiliating experience, especially for women migrant workers (Harsha 2007).

Unhygienic conditions in which the construction workers in Mangalore live have come to light with a number of construction workers visiting hospitals on a frequent basis, particularly the government Wenlock Hospital. Most of the workers have complained of hand and foot infections, alimentary canal disorders, skin diseases and other complaints resulting from workplace hazards. Most of the migrant workers are not tested for HIV infection but the interaction with some of them hints at a very high prevalence of HIV/AIDS.

Mangalore is known for mosquito menace and mosquito related diseases like malaria and filaria are very prevalent here. The migrant workers are the worst victims of these diseases as the buildings under construction have also become their temporary shelters and the stagnant water near the construction area breeds mosquitoes which spread the diseases. A worker who is infected with malaria rarely gets proper medication and rest (Billava 2006).

4. The human right to safe working conditions: Many a time migrant workers are left to work in conditions that are hazardous or harmful to their health. For instance, take the case of workers who deal in cement at the construction workplace. The workers are not given gloves, shoes, helmets and plastic overalls to protect themselves while at work. The fast drying cement, which contains chemicals, gets into their blood stream through cuts and wounds resulting in skin diseases. Once they fall ill, they cannot work for several days and their families are forced to go without food as most of them work on daily wages (Harsha 2007).

5. The human right to freedom from sexual harassment and to protection during pregnancy: The safety of migrant women workers is highly suspect in the construction industry. They are often subjected to sexual harassment and such cases rarely come to light as there is a strong nexus among builders, contractors and sub-contractors. Pregnant women are found to be taking up hard labour even in the late months of their pregnancy.

6. The human right to protection for the child from economic exploitation and from hazardous work: As the construction industry in Mangalore has witnessed a boom during the recent past even children are employed to make up for the shortage of labour. As there are no crèche facilities in most places of work, smaller children often accompany their parents to the workplace to be exposed to health hazards. They are forced to roam around the construction sites without any provision for education.

A study on the street children in Mangalore revealed that most of the street children are in fact children of the migrant workers (Harsha 2007). Often children of the migrant construction workers are engaged in activities such as begging and rag-picking. This reflects a bleak future for the families of migrant construction workers as their children are denied a normal, healthy childhood and education for personality development.

7. The human right to equality before the law: Migrants in Mangalore are disadvantaged as labour laws dealing with them are weakly implemented. Neither the labour department nor the district administration has any relevant and up-to-date data pertaining to the migrant workers in the city. There is hardly any non-government organisation working for the protection of the legal rights of migrant construction workers.

8. The human right to freedom of association and to join a trade union: Migrants have very little bargaining power (Prasheed 2004). Most of the migrant labourers are employed in the unorganised sector, where the lack of regulation compounds their vulnerability. Although there is no stated rule forbidding the migrant workers from forming an association or union to safeguard their interests, there is a sense of fear of losing the job and the basic security by falling out of favour of the employer by attempting to form one (Saleem 1984).

Thus, the overall living condition of the migrant construction workers in Mangalore is very deplorable. They continue to remain vulnerable to many violations of their human rights without having any governmental or non-governmental agency to help them empower their community.

SUGGESTIONS FOR A BRIGHTER TOMORROW

Based on the observations of the human rights' violations against the migrant construction workers in Mangalore the following measures could be suggested to ensure a better future for them.

Measures to be taken by the Government

1. Migrants are unrecognised people. Hence, the government labour department needs to collaborate with the Mangalore city corporation to make sufficient provisions to ensure that all migrants who come to Mangalore register their names with details in order to get better information for effective policy and programme formulation. This would also help in the better implementation of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, and the Building and Other Construction Workers' Welfare Cess Act, 1996.

2. Most of the migrants fall below the poverty line (BPL). However, as they do not possess the BPL card in the place of work, the city corporation should give them alternative identity cards to ensure that they are able to get the basic health care and other facilities meant for the poor.

3. Attempts should be made to ensure proper registration and licensing of the employers so that they provide better working conditions to migrant workers as per the prevailing legal provisions relating to migrant construction workers.

4. Health is often neglected by the migrant workers as they depend on daily wages for their basic sustenance. Hence, the government should provide financial assistance to migrants at the time of illness. The options of providing health related insurance to this category of workers could be explored.

5. The city corporation should ensure that the health workers from the primary health centres visit the living and working places of migrant workers at least once a fortnight to ensure better health care.

Measures to be taken by the NGOs

1. Presently there is not a single non-government organisation (NGO) working with the migrant construction workers in Mangalore. Hence, one of the activities the NGOs can undertake is to organise the migrants so that they can use their organisation as a powerful tool for their empowerment. NGOs need to motivate the migrants to form their own groups and associations for self-help.

2. Effective rehabilitation schemes need to be evolved and implemented for migrant workers who stay in the city for longer periods so that they are enabled to better cope with the local environment.

3. NGOs could utilise the expertise of the social work educational institutions in the city to conduct research and surveys to obtain relevant data and use them for effective social action with the government for the cause of the migrant workers.

Measures to be taken by the Employers

1. The employers' associations need to take the initiative to provide basic housing and living conditions for their migrant workforce.

2. Employers need to provide crèches and balwadis for the children of migrant workers to enable them to avail at least primary education near their workplace.

Measures to be taken by the Migrant Workers

1. The leaders of the migrant workers should make an attempt to come together to discuss their concerns irrespective of their cultural and regional differences.

2. They could approach various governmental and non-governmental agencies in Mangalore to procure for them the basic provisions to safeguard their rights.

3. They should pay special attention to the education of their children as the vicious circle of poverty and exploitation could only be broken by educating the children to effectively deal with the future.

CONCLUSION

Over the past several years the migrant labourers in the construction industry in Mangalore have not witnessed any major improvement in their quality of life. On the other hand, their conditions have become worse. The social conditions in which they live continue to be traditional and exploitative in character.

The problem of alienation is at the heart of the migrant workers' life. They are alienated from their families, their native place, their jobs, land, human dignity and basic identity. This process of alienation ultimately extends even to their self, creating a fertile ground for the violation of human rights. Social workers need to engage in dedicated community work and enlightened social action to ensure better dignity to these workers and to safeguard their human rights.

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