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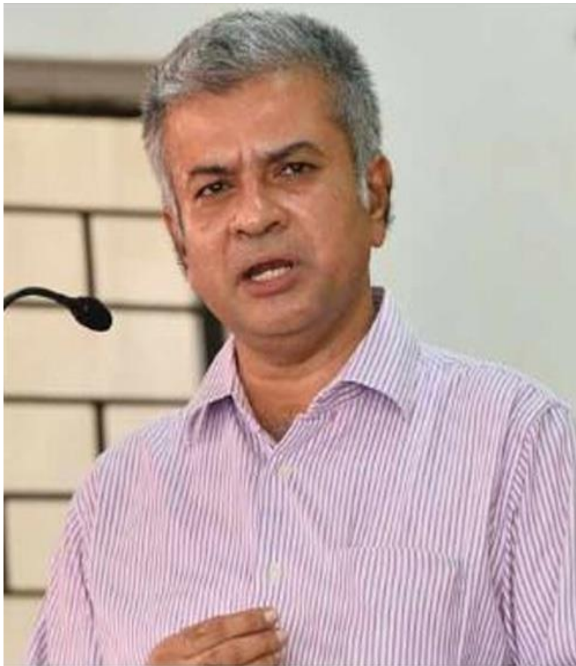

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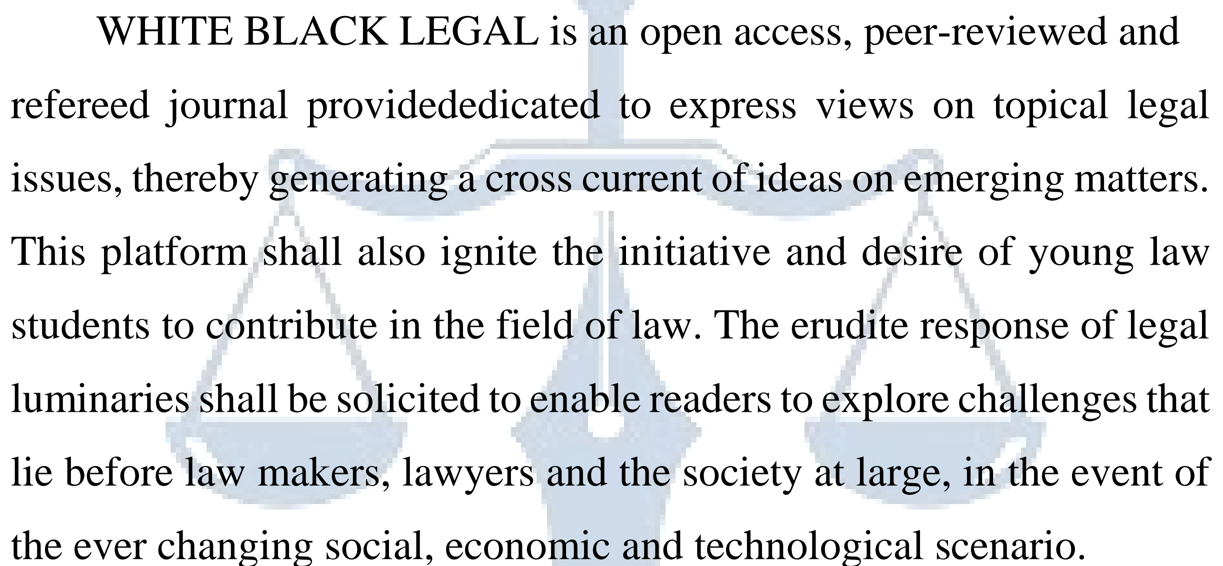
WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you



JUDICIAL ROLE IN PROTECTION OF THE RIGHTS OF INTER-STATE MIGRANT WORKERS-A LEGAL ANALYSIS

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ABSTRACT

Business and industry is dependent on migrant worker that is paid less, works longer and harder, and is more flexible than local labour. Though, in many parts of the world, such a precarious migrant workforce travels across national borders, in India, it is a huge internal migrant force traversing state borders for informal contract work in more developed parts of the country where they are treated as second-class citizens. Usually unable to speak the local language of where they migrate to, rarely represented by any union or social movement, they are easily harassed by employers, government institutions and by other workers. This vulnerability makes them more easily controlled, cheap and dispensable. Indian migrant workers during the COVID-19 pandemic have faced multiple hardships. With factories and workplaces shut down due to the lockdown imposed in the country, millions of migrant workers had to deal with the loss of income, food shortages and uncertainty about their future. Following this, many of them and their families went hungry. Thousands of them then began walking back home, with no means of transport due to the lockdown. This study is need of the hour to protect the rights of inter-state migrant workers in India.

WHITE BLACK LEGAL

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INTRODUCTION

People migrate from one place to another for different reasons and they face various problems due to migration. In India, migration is intimately linked to poor socio-economic conditions of family. The constitution of India provides numerous safeguards for the protection of worker's rights which includes migrant workers. A large number of labour laws have been enacted catering to different aspects of labourers.

Every developed legal system possesses a sound judicial system. The main function of the judiciary is to adjudicate the rights and obligations of the citizens. In India, the role of judiciary is significant. Judiciary administers and promote justice according to law. Under the Indian Constitution, the Supreme Court is the guardian of the fundamental rights of the people. The Supreme Court plays the role of guardian for the social revolution in India. Judicial activism through a process known as Public Interest Litigation has emerged as a powerful mechanism of social change in India. The Public Interest Litigation empowers ordinary citizens to write a letter and draw the attention of the Supreme Court. Judicial action initiated through these written petitions has given justice to the migrant workers. The Public Interest Litigation has become an important part of the judicial system in India.

Judicial activism may continue to force the government to act for the welfare of weaker section like migrant workers. Whenever migrant labours have been denied their rights, in such a situation judiciary works as protector for migrant labourers‟ rights. Hence the Supreme Court and High Courts have played an important role in eliminating exploitation and discrimination against the migrant labour. The Supreme Court and High Courts in several cases has directed the Union and State Governments to implement impressively all provisions of labour laws especially those enacted for protection of migrant from harassment and exploitation etc. Various rights of migrant workers have been recognized by Supreme Court as well as by the High Courts in its various judicial decisions they are analysed.

THE RIGHT TO ADEQUATE STANDARD OF LIVING

The Supreme Court has observed in *Olga Tellis v. Bombay Municipal Corporation,*[2] if there is an obligation upon the State to secure to the citizens an adequate means of livelihood and right to work, it would be sheer pedantry to exclude the right to livelihood from the content

[2] Olga Tellis v. Bombay Municipal Corporation, AIR 1986 SC 180.

of the right to life.

A statue, which does not make adequate provision for allowing use and consumption of intoxicating drinks for medicinal purpose, goes beyond the scope of Article 47. Article 47 has helped in the crystallisation of the judicial view in favour of imposing stringent conditions on liquor trade with reference to Article 19 (6). The Supreme Court has read Articles 47 and 21 together and has culled out there from the obligation on the state to provide better health services to the poor. As the Supreme Court has observed in Vincent;

"...maintenance and improvement of public health have to rank high as these are indispensable to the very physical existence of the community and on the betterment of these depends the building of the society of which the Constitution makers envisaged. Attending to public health, in our opinion, therefore, is of high priority – perhaps the one at the top".[3]

THE RIGHT TO WATER AND SANITATION

In *Delhi Water Supply v. State of Haryana,*[4] a water usage dispute arose due to the fact that the state of Haryana was using the Jamuna River for irrigation, while the residents of Delhi needed it for the purpose of drinking. It was reasoned that domestic use overrode the commercial use of water and the court ruled that Haryana must allow enough water to get to Delhi for consumption and domestic use.

In *Subhash Kumar v. State of Bihar,*[5] the petitioner filed a public interest litigation claim against two iron and steel companies, because they allegedly created health risks to the public by dumping waste from their factories into the nearby Bokaro river. The petitioner also claimed that the State Pollution Control Board had failed to take appropriate measures for preventing this pollution.

As part of his claim, the asked the Curt to take legal action against the company based on the Water (Prevention and Control of Pollution) Act of 1974 and furthermore requested permission to collect waste in the form of sludge and slurry by himself as interim relief. The State Pollution and Control Board claimed that it had sufficiently monitored the quality of effluent waste entering the river and the respondent companies claimed that they

[3] Kirloskar Brothers Ltd, v. Employees State Insurance Corporation, (1996) 2 SCC 682.
[4] Delhi Water Supply v. State of Haryana , 1999 SCC(2) 572.
[5] Subhash Kumar v. State of Bihar, AIR 1991 SC 420.

WHITE BLACK LEGAL

had adhered to the Board's instructions concerning the prevention of pollution.

The Court found that the Board had indeed taken effective steps to prevent the waste discharge from the factories into the river and thus dismissed the petition. Furthermore, it was held that the petition did not qualify as a public interest litigation, because it was filed by the petitioner's own interest in obtaining larger quantities of waste in the form of slurry from one of the respondent companies from which he started to purchase slurry several years prior to the petition.

THE RIGHT TO FOOD

In April 2001, People's Union for Civil Liberties (PUCL) filed a "writ petition" on the right to food in the Supreme Court. This petition was filed at a time when the country's food stocks reached unprecedented levels while hunger in drought-affected areas intensified. Initially the case was brought against the Government of India, the Food Corporation of India (FCI), and six State Governments, in the context of inadequate drought relief. Subsequently, the case was extended to the larger issues of chronic hunger and undernutrition, and all the State Governments were added to the list of "respondents".

This public interest litigation (PIL) is known as *PUCL vs Union of India and Others,*[6] it was famously called as the "right to food case". The basic argument of the petition is that, since food is essential for survival, the right to food is an implication of the fundamental "right to life" enshrined in Article 21 of the Indian Constitution. The petition argues that Central and State Governments have violated the right to food by failing to respond to the drought situation, and in particular by accumulating gigantic food stocks while people went hungry. The petition goes on to highlight two specific aspects of state negligence: the breakdown of the public distribution system (PDS), and the inadequacy of drought relief works. In the final "prayer", the petition requests the Supreme Court to issue orders directing the government: (a) to provide immediate open-ended employment in drought-affected villages; (b) to provide "gratuitous relief" to persons unable to work; (c) to raise food entitlements under the PDS; and (d) to provide subsidised food grain to all families and the central government to supply free food grain to these programmes. Over the time, the scope of this PIL has considerably expanded. Today it covers a wide range of issues related to the right to food, including the implementation

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[6] PUCL vs Union of India and Others, Writ Petition ((Public Interest Litigation) No.196 of 2001.

WHITE BLACK LEGAL

of food-related schemes, urban destitution, the right to work, starvation deaths, and even general issues of transparency and accountability.

RIGHT TO ADEQUATE HOUSING

In *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi & Ors.,*[7] The Court has held that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessaries of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings. The magnitude and content of the components of this right would depend upon the extent of the economic development of the country, but it must, in any view of the matter, include the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human self. Every act which offends against or impairs human dignity would constitute deprivation protanto of this right to live and it would have to be in accordance with reasonable, fair and just procedure established by law which stands the test of other fundamental rights. Therefore, any form of torture or cruel, inhuman or degrading treatment would be offensive to human dignity and constitute an inroad into this right to live and it would, on this view, be prohibited by Article 21 unless it is in accordance with procedure prescribed by law, but no law which authorises and no procedure which leads to such torture or cruelty, inhuman or degrading treatment can ever stand the test of reasonableness and non-arbitrariness: it would plainly be unconstitutional and void as being violative of Article 14 and 21.

WHITE BLACK LEGAL

RIGHT TO HEALTH

The Constitution of India incorporates provisions guaranteeing everyone's right to the highest attainable standard of physical and mental health. Article 21 of the Constitution guarantees protection of life and personal liberty to every citizen. The Supreme Court has held that the right to live with human dignity, enshrined in Article 21, derives from the directive principles of state policy and therefore includes protection of health. [8] Further, it has also been held that the right to health is integral to the right to life and the government has a constitutional obligation to provide health facilities.[9] Failure of a government hospital to provide a patient

[7] Francis Coralie Mullin v. The Administrator, Union Territory of Delhi & Ors., 1981 AIR 746.
[8] State of Punjab v. Mohinder Singh Chawla (1997) 2 SCC 83.
[9] Paschim Banga Khet Mazdoor Samity v. State of West Bengal (AIR 1996 SC 2426 at 2429 para 9).

timely medical treatment results in violation of the patient's right to life. Similarly, the Court has upheld the state's obligation to maintain health services.[10]

RIGHT AGAINST DISCRIMINATION IN HEALTHCARE AND EQUAL APPLICATION TO MIGRANTS:

The Supreme Court in a suo moto petition *In Re: Distribution of Essential Supplies and Services*[11], During Pandemic expressed concerns about the rationale behind this differential pricing and decentralized procurement, pointing out that the vaccine beneficiary at the end is the same, whether procured by the Centre or the states. From the standpoint of public interest, full vaccination of everyone is critical for the country's general well-being. It is not simply a matter of personal choice.

Further, the Apex Court in the same case observed that the manner in which the Centre's new vaccination policy has been framed would seem to be detrimental to the right to public health, which is an integral component of Article 21 of the Constitution. The Hon'ble Court stated that the accessibility and availability of vaccines to the underprivileged and marginalized groups would be determined by each state government based on their financial resources, resulting in disparities throughout the country.

Moving forward, in terms of Article 14 of the Indian Constitution, the Apex Court stated that: *"Discrimination cannot be made between different classes of citizens who are similarly circumstanced on the ground that while the Central government will carry the burden of providing free vaccines for the 45 years and above population, the State Governments will discharge the responsibility of the 18 to 44 age group on such commercial terms as they may negotiate."*

Thus, there is no intelligible differentia between individuals belonging to different age groups solely based upon the Central Government's vaccination campaign. Also, there no need for state governments to pay a higher price to procure the same vaccine from the same manufacturer. Both the States and the Centre have equal responsibility in terms of public health. Both are bound by the same constitutional provision. Thus the same does not

[10] State of Punjab v. Ram Lubhaya Bagga (1998) 4 SCC 117.
[11] In Re: Distribution of Essential Supplies and Services during pandemic, Supreme Court Suo Motu Writ Petition (Civil) No.3 of 202.

WHITE BLACK LEGAL

pass the two-pronged test under Article 14 where there should be intelligible differentia and the differentia must have a rational nexus with the objective.

From a global perspective, it shall be noted that the WHO, as well as GAVI, a global vaccine alliance, have called for the declaration of vaccination as a "global public good" and urged countries to view immunization in terms of creating herd immunity, and thus protecting the entire population, rather than just protecting an individual. Therefore, the above policy is in direct violation of the right to health under Article 21 of the Indian Constitution and paves the way for unreasonable classification between citizens.

To conclude, the only rationale method to proceed with the issue at hand would be centralized procurement and decentralized distribution. The same has been pointed out by the Apex court in the aforementioned judgment:

Prima facie, the rational method of proceeding in a manner consistent with the right to life (which includes the right to health) under Article 21 would be for the Central government to procure all vaccines and to negotiate the price with vaccine manufacturers. Once quantities are allocated by it to each state government, the latter would lift the allocated quantities and carry out the distribution.

In *People's Union for Democratic Rights and others v. Union of India,*[12] the Supreme Court of India held that Magistrate and Judges in the Country must view violation of labour laws with strictness and whenever any violations of labour laws are established before them, they should punish the errant employers by imposing adequate punishment. The labour laws are enacted for improving the conditions of workers and the employers cannot be allowed to buy off immunity against violation of labour laws by paying a paltry fine which they would not mind paying, because by violating the labour laws they would be making profit which would far exceed the amount of the fine. If violations of labour laws are to be punished with meagre fines, it would be impossible to ensure observance of the labour laws and the labour laws would be reduced to nullity. They would remain merely paper tigers without any teeth or claws.

[12] People's Union for Democratic Rights and others v. Union of India, AIR 1982 SC 1473.

In *Bandhua Mukti Morcha v. Union of India,*[13] the court held that the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, by Sub-Section (4) of Section (1) applies to every establishment in which five or more Inter State Migrant Workmen are employed or were employed on any day of the preceding twelve months and so also it applies to every contractor who employs or employed five or more inter-state Migrant workmen on any day of the preceding twelve months. "Clause (e) of sub-section (1) of the section (2) defines "inter-state Migrant Workmen" to mean "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."The court said that in addition to the rights and benefits conferred upon him under the Inter-State Migrant Workmen Act and the Inter-State Migrant Workmen Rules, an inter-state migrant workman is also, by reason of section 21, entitled to the benefit of the provisions contained in the Workman's Compensation Act 1923. The Payment of Wages Act 1936, The Employees" State Insurance Act 1948, The Employee's Provident Funds and Miscellaneous Provision Act 1952, and the Maternity Benefit Act 1961.

In *Hind Mazdoor Sabha v. District Collector,*[14] Bench of M.P. Thakkar, C.J. anid A. Qureshi J. delivered the judgment and gave various direction. The court said that slavery has been outlawed in all civilized countries and the constitution of India does not countenance it. And yet it appears that the plight of unemployed workers seeking an honourable means of livelihood is made miserable by unscrupulous contractors who exploit the helpless workers. It virtually amounts to compelling them to work as slaves.

WHITE BLACK LEGAL

In *Laboures working on Salal Hydro-Project v. State of Jammu & Kashmir,*[15] allowing the petition the Supreme Court of India held that the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 was enacted with a view to eliminating abuses to which workmen recruited from one state and taken for work to another state were subjected by the Contractors, Sardars or Khatedars recruiting them. The Act and the rules framed there under came into force with effect from October 2, 1980 and became applicable to the establishments pertaining to the project work. It was felt that since Inter State Migrant Workmen are generally illiterate and unorganised and are by reason of their extreme poverty, easy victims of these abuses and malpractices, it was necessary to have a comprehensive

[13]Bandhua Mukti Morcha v. Union of India, (1997) 10 SCC 549.

[14]Hind Mazdoor Sabha v. District Collector, (1983) 1 GLR 788.

[15] Laboures working on Salal Hydro-Project v. State of Jammu & Kashmir, 1984 AIR 177.

legislation with a view to securing effective protection to Inter State Migrant Workmen against their exploitation and hence the Inter State Migrant Workmen Act was enacted.

In *Dr. Damodar Panda etc. v State of Orissa etc,*[16] the Hon"ble Supreme Court held that Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979 is a beneficial legislation for satisfying the provision of the Constitution and the obligation in international agreements to which India is a party.

In *Morgina Begum v. Managing Director, Hanuman Plantation Ltd,*[17] the Supreme Court held that the Amended Section 21 of the Workmen's Compensation Act, 1923 has been specifically introduced in the Act by amending Act No. 30 of 1995 with effect from 15th September, 1995 in order to benefit and facilitate the claimants. The Idea behind introduction of this amendment is that migrant labourers all over the country often go elsewhere to earn their livelihood. When an accident takes place then in order to facilitate the claimants they may make their claims not necessarily at the place where the accident took place but also at the place where they ordinarily resides. This amendment was introduced in the Act 1995. This was done with a very laudable object, otherwise it could cause hardship to the claimant to claim compensation under the said Act. It is not possible for the poor workmen or their dependents who reside in one part of the country and shift from one place to another for their livelihood to necessarily go to the place of the accident for filing a claim petition. It may be very expensive for claimants to pursue in such a claim petition because of the financial and other hardship. It would entail the poor claimant travelling from one place to another for getting compensation. Labour statutes are for the welfare of the workmen. This court has in the case of Bharat Singh vs. Management of New Tuberculosis Centre, New Delhi and Ors.[18] has taken the view that welfare legislation should be given a purposive interpretation safeguarding the rights of the have-nots rather than giving a literal construction. In case of doubt the interpretation in favour of the worker should be preferred.

In *S. Sethu Raja v. The Chief Secretary, Government of Tamil Nadu,*[19] the Hon'ble Mr.

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[16] *Dr. Damodar Panda etc. v State of Orissa etc*, 1990 AIR 1901.

[17] Bharat Singh vs. Management of New Tuberculosis Centre, New Delhi and Ors., Supreme Court Appeal (Civil) 4548 of 2007.

[18] Morgina Begum v. Managing Director, Hanuman Plantation Ltd, (1986) 2 SCC 614.

[19] S. Sethu Raja v. The Chief Secretary, Government of Tamil Nadu, WP(MD) No.3888 of 2007 decided on 28 August 2007 by Madras High Court, Madurai Bench.

Justice V. Ramasubramanian of the Madurai Bench of Madras High Court said in this case that the United Nation General Assembly adopted a convention known as "International Convention on the Protection of the Rights of All Migrant Workers and the Members of their Families, 1990" by resolution No. 45/158 dated 18.12.1990. The said convention elaborates the human rights standards to which migrant workers are entitled. It appears that the said convention entered into force on 01.07.2003 after its ratification by the 20th Country, India does not appear to have ratified the convention. Yet, in my view, it would be useful to make a reference to Article 71 of the said convention, which reads as follows: "1. States Parties shall facilitate, whenever necessary, the repatriation to the state of origin of the bodies of deceased migrant workers or members of their families. As regards compensation matters relating to the death of a migrant worker or a member of his or her family, states parties shall, as appropriate, provide assistance to the persons concerned with a view to the prompt settlement of such matters. Settlement of these matters shall be carried out on the basis of applicable national law in accordance with the provisions of the present convention and any relevant bilateral or multilateral agreements."

In *Tradeline Enterprises Pvt. Ltd. v State of Tamil Nadu,*[20] Justice T.S. Sivagnanam observed that "the Migrant Workmen Act was enacted with a view to eliminate the abuses to which the workmen recruited from one state and taken for work to another state were subjected by contractors and others who are recruiting them and the intention of the legislature was to make it applicable to every establishment in which five or more interstate migrant workmen are employed or were employed and it will also be applied to other contractors who employs or employed five or more Inter-State Migrant Workmen. The statement of objects and reasons of the Act states that the establishment proposing to employ inter-state migrant workmen will be required to be registered under the provisions of the Act.

In *Rajan Kudumbathil v. Union of India,*[21] while Pronouncing the Judgment Hon"ble Chief Justice S.R. Bannurmath and Hon'ble Justice A.K. Basheer of the Kerala High Court said that we are satisfied that it is the responsibility of a welfare state to ensure that no citizen of this country is denied his right to live in dignity. He is entitled to get basic amenities in life,

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[20]Tradeline Enterprises Pvt. Ltd. v State of Tamil Nadu, W.P. Nos 14005 & 14035 of 2008 decided on 30.06.2010 by Madras High Court.

[21] Rajan Kudumbathil v. Union of India, WP (C). No. 15393 of 2009 decided on November 12, 2009 by Kerala High Court.

at least to reasonable levels, whether he belong to the same state or hails from outside the state. If various provisions contained in the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 or the unorganised workers" social security Act, 2008 would, if implemented, take care of many of the problems that are being faced by some of these migrant workers.

PROHIBITION OF SLAVERY AND SERVITUDE:

In the Minimum Wages Act, 1948 the items in the Schedule are those where sweated labour is most prevalent or where there is a big chance of exploitation of labour. More categories of employment can be added under this Act. The object of the Act is directed against exploitation of the ignorant, less organised and less privileged members of the society by the capitalists. The anxiety of the State for improving the general economic condition of some of its less favoured members appears to be in supersession of the old principle of absolute freedom of contract and the doctrine of laissez faire and in recognition of the new principles of social welfare and common good.[22] The object of this Act is to prevent exploitation of the workers and for this purpose; it aims at fixation of minimum wages which employer must pay.[23] The legislature undoubtedly intended to apply the Act to those industries or localities in which, by reason of causes such as unorganised labour or absence of machinery for regulation of wages, the wages paid to workers were in the light of the general level of wages and subsistence level inadequate.[24]

In *Rohit Vasavacia v. General Manager, IFFCO,* [25] the pitiable conditions of contract labour working in a fertiliser factory run by a cooperative society were brought to the notice of the Gujarat High Court. The workers had to handle urea manually without adequate safeguards; they were not free to leave the premises as they desired; their health was in jeopardy and proper wages were not being paid to them. The High Court characterised this form of labour as forced prohibition by Article 24.

Considering the problems of contract labour employed in the fertilizer factor, the Gujarat High Court stated that economic compulsions may persuade workmen to work

[22] Y.A. Mamarde v. Authority under M.W. Act, AIR 1972 SC 1721.
[23] Edward Mills Co. Ltd,. Beawar v. State of Ajmer, (1954) II LLJ 696.
[24] M/s.Bhikua Yamasa Kshatriaya v. Sangamner Akola Taluka Bidi Kamgar Union, AIR 1963 SC 806.
[25] Rohit Vasavacia v. General Manager, IFFCO, AIR 1984 Guj 102.

under conditions different from those envisaged in the labour laws and the mere fact that they are working, not under any apparent physical restraint, does not render the work voluntary.

The Court said that when due to economic compulsions, workmen are forced to work under inhuman or subhuman conditions, without the safeguards, facilities and amenities secured to them under the law being made the law being made available to them, irrespective of wages paid to them and their apparent consent, the labour employed will be forced labour contrary to Article 23. The high Court gave necessary directions to the labour commissioner to take steps to remedy the situation and to enforce the provisions of the Contract Labour (Regulation and Abolitions) Act, 1970.

A more conservative view was adopted in 2006 by the Supreme Court in Umadevi's case. The argument that Article 23 of the Constitution is breached because the employment on daily wages amounts to forced labour was not accepted on the ground that "the employees accepted the employment at on their own volition and with eyes open as to the nature of their employment."Nevertheless the court ensured that the minimum wages were being paid to the earlier wagers.[26] The shift from the earlier liberalism is also reflected in *State of Karnataka v. Ameerbi,*[27] where Anganwadi workers appointed under a Central Government funded scheme known as Integrated Child Development Service Programme were held not to be entitled to claim a minimum wage, living wage or fair wage.[28]

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THE RIGHT TO REST AND LEISURE

Section 51 of the Factories Act, 1948 lays down that no adult worker shall be required or allowed to work in a factory for more than forty-eight hours in any week. Section 51 does not prohibit requiring an employee working 42 hours a week to work 48 hours after a departmental transfer and he cannot claim overtime wages for those additional six hours.[29]

It was held in *John v. State of West Bengal,*[30] that the opening words of subsection (1) of section 52 of Factories Act, 1948 indicate a prohibition from requiring or permitting an adult

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[26] Secretary, State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 at page 40. AIR 2006 SC 1806.
[27] State of Karnataka v. Ameerbi, (2008) 1 SCC (L&S) 975.
[28] State of Karnataka v. Ameerbi, (2007) 11 SCC 681.
[29] Imperial Tobacco Co., v. State, AIR 1971 Cal 109.
[30] John v. State of West Bengal, AIR 1956 SC 1341.

worker to work in a factory on the first day of week. The prohibition is, however, lifted if steps are taken under clauses (a) and (b) of that section. .A perusal of clause (b) makes it abundantly clear that what is required to be done there under, that is to say, to give and display a notice is only for the purpose of securing an exemption from the prohibition contained in the opening parts of Section 52 of the Act. Clause (b) cannot therefore, be linked to some other provisions of the Act which impose a positive duty upon the manager to do something. The prohibition contained in the opening words of this sub-section is general and is not confined to the manager.

FREEDOM OF ASSOCIATION IN LABOUR RIGHTS: THE RIGHT TO FORM AND JOIN A TRADE UNION:

In *Damayanti v. Union of India,*[31] the validity of Hindi Sahitya Sammelan Act, 1962 was challenged as violative of Article 19(1) (c). The petitioner was a member of an association. The Act changed the composition of the association and introduced new members. The result of this alteration was that the members who voluntarily formed the association were now compelled to act in the association with other members in whose admission they had no say. The Supreme Court held- The Act violated the rights of the original members of the society to form an association guaranteed under Art 19 (1)(c). "The right to form an association", the Court said,"necessarily implies that the person forming the association have also the right to continue to be associated with only those whom they voluntarily admit in the association. Any law by which members are introduced in the voluntary association without any option of being given to the members to keep them out, or any law which takes away the membership of those who have voluntarily joined it, will be a law violating the right to form association." The Hindi Sahitya Sammelan Act does not merely regulate the administration of the affairs of the original society, what it does is to alter the composition of the society itself. The result of this change in the composition is that the members who voluntarily formed the association are now compelled to act in the association with other members who have been imposed as members by the act and in whose admission to membership they had no say. Such alteration in the composition of the association itself clearly interferes with the right to continue to function as members of the association which was voluntarily formed by the original founders. The Act, therefore violates the right of the original members of the society to form an association guaranteed under Article 19 (1) (c).

[31] Damayanti v. Union of India, (1971) 1 SCC 678.

CONCLUSION

In India, the Supreme Court is strong, independent and creative. Through judicial interpretation, the Supreme Court has widened the sweep and scope of migrant workers rights in India. It has intervened suo motu, whenever the violations of rights have taken place and had come to the rescue of the citizens.

In the recent years, the judiciary began to award compensation for the violation of human rights and labour rights by the State. Judicial activism has not only protected the rights of the people, but it has also led to the granting of exemplary compensation to the victims of police atrocities, which resulted in human rights violation. The Judiciary is playing a crucial role in the protection of the human rights of the migrant workers from time and again by expanding the scope of the rights and recognizing the new rights with the need of time.