



## MIGRANT WORKERS AND INTER-STATE MIGRANT WORKMEN (ISMW) ACT IN ALANG SHIP BREAKING YARD

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### ABSTRACT

#### KEYWORDS:

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*In India, the movement of workers from one State to other is common. This is due to the fact that workers migrate to fulfill their financial requirement and for good living. But after migration to place of destination they face various problem and exploitation. Therefore, for the protection of migrant labour Central Government enacted Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979. The provisions of the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 does provide good provisions for the protection of migrant workers from the possible exploitation at the hands of contractors and employers for the reason of their weak bargaining power and settlement in the new environment. It also provides for extending some more benefits to such workers looking at their dislocation from home places. But all this has failed to yield any results for the present study on Alang ship breaking yard is an indication of the national scenario. The aim of the present paper is to detail with the problem faced by migrant workers in Alang ship breaking yard and to find why ISMW Act, 1979 fails to achieve the goal.*

### INTRODUCTION

There are good numbers of scholarly work available on ISMW Act but there is good deal of variation amongst the different scholars. On the point of the strength of migrant workforce in Alang but it is broadly accepted that at present more than 2 Lakhs workers from other States are working in the Alang Ship Breaking Yard on a practically regular basis. Therefore, a significant strength of migrant workers is employed in the Alang ship breaking yard. It is also a fact that such workers are in a totally strange/different environment where by reason of their poverty, ignorance and illiteracy, they are totally unorganized and helpless and become easy victims of exploitation. It is a well know fact that the migrant workers in the State are considerably discriminated against on the job allotments, pay packages and in their social life in Gujarati society. Now the situation has arisen when these workers are considered as 'outside elements' and demand that such labourers should be pushed out of the Alang region. But the fact is that ship breaking activities are not possible without migrant workers because this activity required hard labour.

It is in this socio-legal background that this paper has been written to understand the problems of the migrant workers in Alang, the provision of the ISMW Act and to

identify the reasons as to why this ambitious Central law has failed to deliver the goals. For the study, data has been collected from 300 migrant workers working in the world's largest ship breaking yard and their observations have been corroborated with information gathered from the local workers placed in similar work situations and also with their employers, the trade union representatives and the labour enforcement staff of the State Government.

### IMPORTANT PROBLEMS OF MIGRANT WORKERS

The present study has brought to surface that the migrant workers in Alang ship breaking yard are facing many problems and these problems also have an amount of difference in the different categories of work.

1. **Lesser Wages:** There are various studies conducted by researchers on the payments and wages to the labour in Indian industries. The researchers cover wide range of industries viz, Carpet weaving, Glassware, Beedi industry, Construction, Brassware wherein labour face exploitative conditions. These industries also cover length and breadth of India. Various studies on construction industry analysed the Minimum Wages

legislation. The analysis of the Minimum Wages with respect to employment in the construction or building operation is on the basis of the recommendation of Labour Commissioner. The average wage rate prevailing in construction industry in most cases far below the Minimum Wages fixed under the Act (Subrahmanian, Veena and Parikh 1982). In Alang ship breaking yard wage rates especially for unskilled workers are found to be below the Minimum wages as mentioned in the Minimum Wages Act. According to data available on minimum wages by Gujarat Government, the minimum wage fixed in April 2002 for skilled workers at Rs.89 and for unskilled workers at Rs.79 per day. The results of the survey suggest that wages at Alang ship breaking yard are higher than those earned by workers at their native place, but labours are receiving wages less than the prescribed minimum wages. Such wages cannot be considered "Fair Wages" as provided in article 7 of ICESCR. In Alang, the industry employs less number of local labours due to their high demand for wages or non availability at the prevailing wage rate. Infact, section 13 of the Inter-State Migrant Workmen Act, 1979 provides that the wage rates of the inter-state migrant workmen should be same as those applicable to such other workmen and also the inter-state migrant workmen should not be paid less than the wages fixed under the Minimum Wages Act.

2. **Delay in Payment of Wages:** Workers in Alang ship breaking yard have reported to be facing the problem of delay in payment of wages and that they have to wait for several days to weeks to receive wages. According to labour contractors this delay was due to the problem of finalization of accounts. When payment is delayed contractors pay 50% of the wages to workers and for remaining amount of wages workers have to wait for several weeks. Such practice violates section 5 of Payment of Wages Act 1936 which provides that payment of wages should be paid by the expiry of the seventh day after the last day of the wage period (i.e. month).

Workers in Alang do not receive any written contract of employment. The employers decide the wage of the workers but the amount agreed at the beginning of the month can be modified by the employer due to various reasons known only to the employer. The large majority of workers interviewed by researcher found that they were not paid the original amount decided either by the owner or the labour contractors on various occasions. This practice appears to be extremely common in Alang ship breaking yard.

3. **Denial of Social Security Benefits:** The social security benefits like ESI and the Employees Provident Fund are denied to all workers except labour contractors for the reason that such workers are not regularized and are, therefore not shown on the muster rolls. The proportion of such migrant workers, who were denied these benefits constituted more than 90 percent. In ship breaking sites of Alang,

it is found that there is no system of social security benefits.

4. **Problem of Housing:** *Housing is perhaps the biggest problem that the migrant workers face in their place of destination.* In the present study it is revealed that the migrant workers prefer to work with an employer who offers free residence with adequate supply of water even if they are paid a little less. But such offers are not much. Out of 300 migrant workers, 103 (34.3 percent) are living in rent free accommodation. They are living in the spontaneous houses which are built in the Government/private land. It appears that more migrants are on the look for rent free accommodation to minimize their living expenses. A considerable proportion of migrant workers live in rented private houses in nearby village. 39 percent of workers live in rented houses belonging to private landlords. Further 26 percent of the workers live in collective dormitories in which they are paying rent for living as well as for minimal facilities. In some dormitories there is a facility of common mess. These dormitories are owned by the people from different states. For instance, numbers of dormitories in existence are owned by the non Gujarati personnel. During survey it was found that in one of the dormitories only Oriya labours are staying and is owned by a person from Orissa.

5. **Long Hours of Work:** At Alang ship breaking yard working day usually starts at 8am and finishes at 5pm with two hour compulsory overtime till 7pm every day. Since there is no difference between overtime and regular hours and the working day is of 11 hours. One hour is allowed for lunch along with a 15 minute morning and afternoon tea break at around 10am and in afternoon at around 3pm. This shows that a labour works for 11 hours with 11/2 hours of break and is not paid for extra work put in for two hours on daily basis. Some workers start work at 7am which depends upon the workload in the yard. This means that workers on an average work for 2 extra hours in a day which violates the section 51 and 54 of the Factories Act, 1948 which provides for a maximum of 48 hours work a week and nine hours in a day respectively.

It is found that the average number of working hours for all categories of labours is 9.57 hours. Manual workers are worked for 10.67 hours per day which comes to on an average 66 hours per week. It violates the section 51 & 52 of Factories Act, 1948. Similarly, semi-skilled workers also work for 10.04 hours per day counting almost equal number of working hours per week. But in case of skilled and highly skilled workers they work for on an average 8.85 and 8.03 hours per day and 48 to 49 hours per week respectively.

Night work is not usually practiced in Alang ship breaking yard but however it depends on the workload in the yard. Some activities such as loading and unloading at Alang ship breaking yard is taken up during night hours. Gas cutters working on the ground are also found to operating during night hours which is contrary to the provisions of section 57 of

the Factories Act. Overtime is mandatory or compulsory for workers in Alang ship breaking yard and worker have to work due to fear of losing job. This practice should be considered as forced labour under international human rights law and is also violates the Factories Act, which provides that no worker can be required to work overtime.

There is no canteen facility in Alang ship breaking yard. This intact is contrary to section 41 of the Inter-State Migrant Workmen Act, 1979 and section 46 of the Factories Act. Every worker has to bring their own food. It means that the daily routine for Alang workers starts at 5am, when the workers get up to prepare their meals for the day. According to Section 59 of the Factories Act, any work more than nine hours a day or 48 hours a week shall be paid overtime at twice the ordinary rate. But the case is different in Alang ship breaking yard where no payment corresponding to overtime. They receive only wage fixed for 9 hours. Several workers lose their day's work if they are late even for 5 minutes. Such practice is contrary to section 14 of the Minimum Wages act, 1948 which provides for the payment of overtime hours or part of an hour.

6. **Job Discriminations:** It has also come to light during the study that there exists an amount of discrimination with the migrant labour on the issue of job allotments. Because of the financial hardship and their helpless situation such workers are offered the jobs, which the local workers normally shirk to perform. It is so in all categories of work.
7. **No Back-journey Fare:** The migrant workers have strong attachments with their home places and also having some piece of land for this reason they have to go back at periodic intervals. Most of the migrants have come from far distance to Alang ship breaking yard. Considering this, 93 percent of respondents normally visit their native place show a pretty close contact that, rural migrants maintain with the people of their community of origin. In the case of rest of 7 percent who do not visit their native it is quite likely that some of them may have joined job recently. For them getting leave and money for traveling expenditure would have not been possible. This taxes them a lot in the name of to and fro train fares, unpaid holidays and also many times the loss of job, causing thereby some days of forced unemployment after their return. The employers never pay the fares for such visits.
8. **Feeling of Loneliness:** The migrant workers living in Alang without their families unanimously feel that at occasions they feel very lonely and not-cared in this new setting. It has also come to focus that though the migrant workers develop a good amount of affinity and community feeling amongst themselves but even then the caste distinctions and area difference of their home States are given considerable weight in their social relations.
9. **Medical Treatments:** In various legislations there are provisions to provide free medic treatment to industrial workers in case of occupational accidents and diseases. In Alang ship breaking yard, each yard employs more than 250-300 workers but

none of the yards have doctor at site. There is not a simple doctor on staff for even one the yards. Thus workers are in a highly dangerous situation. Red Cross medical hospital exists at Alang ship breaking yard which provide only first-aid and it cannot handle major accident cases. Medical treatment is provided at Bhavnagar in case of major accident. Some employer provides initial medical treatment for their workers in case of major accident. It is also an area where the discretionary powers of the employer exist.

In case of accidents the owners of site provide transportation of the worker to Red Cross hospital or if accident is serious then send them to hospital in Bhavnagar city. The general norms are that owners have to pay for treatment and bear the medical expenses. However in actuality the employer does not pay any expense. The employer refuses to recognize the link between such diseases and their work on the plot. The researcher interviewed doctors in Red Cross hospital as well as in private clinics in and around Alang. It is found that there exist direct link between most of the diseases the workers face and their occupation and the conditions of work.

In Alang ship breaking yard generally workers do not receive wages when they are absent on medical ground. Many a time employer gives option between the wages or medical expenses. There are many cases and disputes between employers and workers on medical treatment. As reported by the workers many ship breakers pay for food during a medical leave, but not wages or medical expenses. In Alang ship breaking yard for most of the injured workers, medical treatment is therefore catastrophe and workers generally take loans from friends and relatives and occasionally from their employer for medical treatment. But the worst thing is that the workers have no guarantee that he will reemployed when he returns after medical treatment.

10. **Other Problems:** The migrant workers also reported that employer not issue ration cards to avail the benefits of Public Distribution System of the State and their votes are also not prepared to a good extent.

A good number of problems faced by the migrant workers in Alang ship breaking yard have been conceived and addressed to in the ISMW Act. The present paper study of its provisions and as to why the same have failed to cause its remedial action is presented hereunder.

#### **WORTHLESS STATUTORY PROVISION**

The provisions of ISMW Act Section 13 provides that wages rates, holidays, hours of work and other conditions of work of the migrant workers will be the same as those of the local workers employed in the same establishment and doing the similar kind of job unless provided otherwise by the appropriate Government. It has been made clear that the wages paid to such workers shall in no case be less than the minimum wages fixed under the Minimum Wages Act, 1948 and the payment thereof shall always be made in cash.

#### **Reason for Problems to be Continue**

The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act applies as per

sub-section (4) of Section 1, to the establishments and the contractors employing 5 or more Inter-State migrant workmen. The majority of employers in Alang get excluded from the operation of this law. And further the definition of an Inter-State migrant workman, under clause 2(1), covers only those workers who are recruited by or through the contractors from one State under an agreement or arrangement for working in another State. This way the migrant workers directly employed by the employers are not embraced by the provisions of this law. And this remains to be the situation in Alang and also other parts of the country. The definition of contractor, given under Section 2 (1)(b) with Section 8 dealing with the licensing of contractors, further limits the definition of the migrant workman to those employed through licensed contractors. The Act also prohibits, under Section 6, the principal employers from employing Inter-State migrant workmen unless such employers get their establishment registered with the concerned registering officers. Under the registration process, Section 4 of the Act, also involves a procedure and formalities and the same undoubtedly turns to be onerous for the employers.

All these provisions of law added with the additional obligations of the contractors and employers persuade them to avoid from employing the migrant workers or to do so in such a way that their establishments are not attracted by the provisions of this Act. The officers of Gujarat Labour Department also agree that the Act does not apply to the establishment in the Alang, which otherwise employing the migrant workers. The employers and the migrant workers alike are of the view that the Inter-State migrant workers travel long distances to the State of Gujarat for the reason that they can get more remunerative wages. For getting an employment, in the present day situation of huge unemployment, the migrant workers approach and practically bow before the employers and the latter admit that they have a preference for employing a migrant worker only if he agrees for a lesser wage or for doing a job, which the Gujarati worker does not accept. During the busy season (when more ship comes for breaking), however, ship breakers (employers) prefer to employ the migrant workers for the reason that the same are available in group and they work over-time to complete the work in time.

## CONCLUSION

From the above discussion it is found that the provisions of the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 does provide good provisions for the protection of migrant workers from the possible exploitation at the hands of contractors and

employers for the reason of their weak bargaining power and settlement in the new environment. It also provides for extending some more benefits to such workers looking at their dislocation from home places. But all this has failed to yield any results for the present study on Alang ship breaking yard is an indication of the national scenario. The ground reality regarding the employment of inter-State migrant workers is different from the makers of the ISMW Act.

The law, therefore, constructs its provisions on the foundation that the employers badly need such workers and for the purpose the services of some middlemen are used. To avoid the exploitation by such middlemen called contractors or muqadam in Alang, the law has been woven on the presumption that to meet the needs of large-scale labour force, the employer does not mind paying or spending more on such labour than he would have done for employing the local labour. In today's situation a rare phenomenon in the employment of migrant workers, the provisions of law may prove to be counter-productive. Under the circumstances when the migrant workers travel long distances keeping in mind the better job opportunities in the State of their migration, it is desirable that an equal treatment amongst the migrant and local workers is ensured. Central and State Government can solve the problem of housing by extending tax benefits to the employers if they invest on housing of the workers.

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