CHAPTER V

CONCLUSION AND SUGGESTIONS

Migration is not new to the human race. It has been contributing to economic and social development by enabling men to overcome the tyranny of space. Migration in India has largely been fueled by push and pull factors. The increasing regional disparities, rural-urban disparities and urban bias in economic planning. The word 'migrant workers' came into picture in the 19th century when land revenue was assessed in India at high rates by the British rulers. It created a new class of landless labourers. The bulk of rural population in our country has to depend on the agriculture for the main source of their livelihood. Failure of rain and consequent failure of agriculture hits the main source of income of this large segment of population.

Besides draught there are some other factors also which play a major role in the seasonal migration of the labourers. Other various causes of migration of labour are agricultural poverty, the decline of village and cottage industries, poverty of the people, draught affected villages in which absentee of work for about six months per annum and the existence of a large size of small cultivators whose holdings are extremely inadequate and landless labour in
economically weaker sections of the community, and lower caste people. Therefore, there are two important reasons for rural labour migration: (i) migration for survival (ii) migration for subsistence. The first indicates the severe social and economic hardships faced by rural labourers, a situation where migration becomes necessary to stay alive. These communities are generally landless, illiterate and drawn largely from Scheduled Casts, Scheduled Tribes and other depressed casts. The second reason for migration is also rooted in subsistence and arises because of the need to supplement income in order to fill the gaps of seasonal employment. Such communities often migrate for shorter periods and don't ordinarily travel very far from their homes. Now, system of migration has become regularised and various types of contractual systems have emerged. Migrant labourers have not only become an integral part of India's economy, but also important constituents of society.

The main driving force behind migration is a better standard of living away from home. In the recent decades migration has been taking place amidst increasing global economic, political and social integration which has been accompanied by greater speed and ease of transportation. As the country enters early transitional stage of development, the movement of people is directed from rural
to urban areas. This urbanward migration is in response to
the creation of new employment opportunities in secondary
and service sectors which tend to be spatially located in
cities and towns and it is also fueled by improvements in
agriculture. In the later transitional stage of development,
the rapid growth of industrialisation, transport and
communication and other economic and social overheads
in urban areas encourage people to migrate in large
number from smaller towns to big and specialised
metropolitan cities in search of better employment
opportunities. The motives of migration are sometimes
classified as push factors (which emphasize on the
situation at the origin, that is, place from which migration
started) and pull factors (which emphasize on the situation
at the destination), unemployment, flood, earthquake,
draught (i.e. natural calamities) etc. are the push factors.
Pull factors that determine migration such as attraction of
city life, for education, health, development of backward
community, job opportunities and training facilities and so
on.

The system of employment of migrant labour is a
complex one. In this system workers are engaged from the
place of their origin through the intervention of contractors
or middlemen or Thekedar or Khatadar and they are
migrated to some other destination. This is similar to
Dadan labour. Dadan labour is a form of contract labour and labourers are recruited from various parts of the State of Orissa for work mainly in large civil works outside the State. The agency for such recruitment is Dadan agent and Sardar under the Orissa Dadan Labour (Control and Regulation), Act. These agents have their agents called Khatadars who are incharge of recruitment of each group of such workers, their placement in the projects and payment at the time of recruitment.

The vast majority of migrant workers fall in the unorganised sector. The system of employment of inter-state migrant labour is an exploitative system prevalent in the country. Workers are recruited from various parts of the State through contractor or agents called Sardars/ Khatadars for work outside the State in large construction projects. This system lends itself to various abuses. Though the Sardars promise at the time of recruitment that wages calculated on piece-rate basis would be settled every month, the promise is not usually kept, once the workers comes under the clutches of the contractor, he takes him to a far off place on payment of railway fare only. No working hours are fixed for these workers and they live in extremely bad working conditions. The provisions of various labour laws are not being observed in their case
and the migrant workers are subjected to various malpractices.

In view of Internation labour standards framed by Internation Labour Organization and in the true spirit of constitutional law of India, the Government of India has enacted various labour laws for providing protection to migrant workers. These laws are: Minimum Wages Act, 1948; Contract Labour (Regulation and Abolition) Act, 1970; Bonded Labour System (Abolition) Act, 1976; Employees' Compensation Act, 1923; Maternity Benefit Act, 1960; Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act; Payment of Wages Act, 1936; Equal Remuneration Act, 1976; Factories Act, 1948; The Child Labour (Prohibition and Regulation) Act, 1986 and Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979.

The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 was enacted to regulate the employment and conditions of service of inter-state migrant workers. Section 2(e) of the Act defines inter-state migrant workman as 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. According to this definition, it is clear that all migrant workers (who are generally unorganised workers) are not inter-state migrant workers as defined by the law and cannot, therefore enjoy the benefit such as non-discrimination in wages rates, holidays, hours of works and other conditions of work for inter-state migrant workers in relation to local workers. Some other benefits are that they are eligible for non-refundable displacement allowance equal to 50% of their monthly wages in addition to the wages. Section 15 of the Act provides that a journey allowance of a sum not less than the fare from the place of residence of the inter-state migrant workman in his State to the place of work in the other State shall be payable by the contractor to the workman both for outward and return journey and such workman shall be entitled to payment of wages during the period of such journeys as if he was on duty. Other provisions include regular payment of wages, equal pay for equal work irrespective of sex, suitable conditions of work, suitable conditions of residential accommodations, adequate medical facilities, adequate clothing and in case of accident or serious bodily injury to be reported to the specified authorities. But to prove in court that the Act is applicable is very difficult, as the employer will deny that workmen were recruited from another state (home State) by any of their contractors.
They often contend that the workers were recruited from nearby place in the state where the industry is located. Thus, the Act only confers limited benefit on the workers in the unorganised sector. Necessary to mention that none of these labour laws provide protection to the vast majority of unorganised workers who are self-employed or home based or to other workers who are employed in enterprises where the number of employees does not reach the threshold prescribed by the Act.

Theoretically speaking the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 provides 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 position and placement in the new environment. It also provides for extending some more benefits to such workers looking at their welfare and the hardships they may face by way of their dislocation from the home places. It is so far the basic reason that the ground level reality regarding the employment of inter-state migrant workers is different from the one conceived by the makers of the ISMW Act. A bare reading of the proceedings of the 28th Session of the Labour Ministers’ Conference (New Delhi, October 26, 1976) and the recommendations of the Compact Committee constituted for the purpose of
studying the problem in depth and suggesting the provisions of this law makes it clear that the enactment was aimed at dealing with the inter-state migrant workers required by the employers in large numbers for construction of dams etc. 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 known by some other names, 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. As this situation is today a rare phenomenon in the employment of migrant workers, the provisions of law may prove to be counter-productive. In the given set of 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. In addition, the problem of housing for such workers may be met by way of the schemes of the Governments, both Central and State, and by extending tax benefits to the employers if they invest on housing of the workers.
A further study of the provisions of this Act and a comparative study of other labour statutes, makes it clear that many provisions of the Contact Labour (Regulation & Abolition) Act, 1970 have been re-produced in verbatim. The special provisions, if needed for safeguarding the interests of migrant workers when recruited in abundance for specific projects, may also be inserted in the Act of 1970 itself. It is, therefore, submitted that there is no need of ISMW Act and the same may be considered during the ongoing exercise for rationalisation of labour laws. To the mind of the researcher such an exercise will lighten the pressure of obeying too many labour laws by the employers with its corresponding effect on the implementation machinery and the same may pave a way for easy employment of migrant workers as the free and equal citizens of India and it may also help in the implementation of other connected laws like The Minimum Wages Act, The Factories Act, Payment of Wages Act, Equal Remuneration Act, The Industrial Disputes Act and of course the Contract Labour Act as well. The desirable objective, of course, will be to have a comprehensive labour code making special provisions regarding women, young workers and the migrant workers.
If we look at the provisions of the ISMW Act, section 13 provides that the wage 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, however, been made quite plain 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. The Supreme Court of India, while dealing with such a matter in Asiad Construction Workers’ case declared that a wage getting reduced from the minimum wages even by a rupee by way of deduction made by the middleman in employment amounts to bonded labour and is, therefore, unconstitutional. None of special protection to the migrant workers are implemented in the state.

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 five or more inter-state migrant workmen. Accordingly, the majority of employers in Haryana get excluded from the operation of this law. And further the definition of an inter-State migrant workman,
under clause (e) of Section 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 the State of Haryana and other parts of this country. The definition of contractor, given under Section 2(1)(b) read with Section 8 dealing with the licensing of contractors, further limits the definition of the migrant workman to those employed through the licensed contractors. The Act also prohibits, under Section 6, the principal employers from employing inter-state migrant workmen unless such employers get their establishments registered with the concerned registering officers. The registration process, as can be read from 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 (which turn to be that of the principal employers with an additional financial burden) persuade them to avoid from employing the migrant workers or to do so in such a way (legally or otherwise) that their establishments are not attracted by the provisions of this Act. The officers of the Labour
Department, Kurukshetra district, of Haryana also agree that the Act does not apply to the establishments in the State, which are otherwise employing the migrant workers. The trade unionists, employers and the migrant workers alike are of the view that the inter-state migrant workers travel long distances to the State of Haryana for the reason that they can get more remunerative wages. For getting an employment, in the present-day situation of large-scale 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 Haryanvi worker does not accept. During the busy agricultural season, however, the Haryanavi farmers prefer to employ the migrant workers for the reason that the same are available in groups and they work over-time to complete the task in time. The officers of the Labour Department say that they seldom get a complaint from the migrant workers under the ISMW Act. The non-availability of any case in the courts of the State, the total absence of any reported case law under this Act makes it clear that the migrant workers are unaware about their rights under the law.
In addition to above, an analysis of Unorganized Workers’ Social Security Act, 2008 also reveals the following drawbacks in this Act.

There is no clarity in the Act as to what the state means by ‘Social Security’ or any of the benefits it proposes. It is laid down in the Act that the government would periodically notify schemes related to life and disability cover, health and maternity benefits, old age protection and any other benefit as may be determined by the Central Government. Schedule I of the Act consists of ten such schemes like Aam Admi Bima Yojana, Rashtriya Swasthya Bima Yojana, Janshree Bima Yojana, Janani Suraksha Yojana, Old age pension, family benefit schemes related to weavers, artisans and master crafts person. It is essential and pertinent to mention here that these schemes are not new and are mostly applicable only for Below Poverty Line people.

Chapter III and IV of the Act are devoted to formation of National Social Security Board and State Social Security Board for unorganized workers respectively. But the role performed by these boards is only recommendatory and advisory in nature. They are not competent or empowered to take decisions on their own. It is upto the government to accept or not to accept the recommendations made by the board. These boards may review issues relating to the
registration of workers and monitor schemes notified by the government. In fact, the board has no power, no authority over anything. Therefore, it can be said that the boards are toothless. In addition to it these boards are also very large. These raise serious questions on the commitment of the government about the delivery of social security benefits to the unorganised workers.

Unpaid women workers are also not covered by the Act because they do not fall within the definitions of self employed workers, wage workers or home based workers. According to these definitions, getting wages or monthly earnings are condition precedent for being considered as unorganised workers. Therefore, the thing which gives pain is that the monetary value of women’s work is not measured. However, it should not be a reason for denying social security to women workers. Moreover, the problems of security, sexual harassment, proper accommodation for migrant women workers, issues relating to nature of work and industrial safety, gender wage gap, non payment of wages, child care facilities at work spot etc. have been totally ignored.

The object of the Act is to provide social security and welfare to the unorganised workers, but it does not confer any defined right to social security for them. The schemes relating to social security are mentioned in Schedule I of
the Act. This clearly means that these schemes can be changed at any time by way of a notification, and not after discussion in the Parliament. This denies the unorganised workers the benefit of consistency and justiciability. It is also a fact that these schemes are arbitrarily changed by the government through administrative notifications. Therefore, it is submitted that the content of the schemes should not be changed without the approval of the Parliament. Moreover, the government should not change the schemes unilaterally.

**Important Problems of Migrant Workers**

The study has brought to surface that the migrant workers working in Kurukshetra district are facing many problems. A brief account of such problems is as under:

1. **Lesser Wages**: The study has revealed that the migrant workers are getting less wages than the wages prescribed under Minimum Wages Act. Eighty percent of the migrant workers excepted the fact that they are not getting minimum wages fixed by the Government of Haryana. It has also been found during the study that the proper records etc. of the migrant workers and their wages is not maintained by the employer. It has also been found that in no case the migrant workers get more wages than their brothers. Therefore it is evidently clear by the study
that the provisions of Minimum Wages Act are not being followed by the principal employer.

(2) **Non Regular Payment of Wages**: The study has revealed that fifty nine percent of the migrant workmen are not getting regular payment of the wages and other dues at the time they have to leave for their homes. The workers alleged that their employers went on delaying the payments and ultimately they had to go without receiving payments. It is also highlighted by the migrant workmen that no date has been fixed for the payment of dues. Therefore, a sense of uncertainty prevails regarding the payment of wages to them. It clearly implies that the provisions contained in Payment of Wages Act have no meaning for them. It is pertinent to highlight here that the trade unions, their representatives do not come to the rescue of such helpless workers for the simple reason that such workers are not members of trade union.

(3) **Denial of Social Security Benefits**: The social security benefits provided under ESI Act, the Employees' Provident Fund Act and the Unorganized Workers Social Security Act are denied to migrant workers for the reason that such workers are not regularised and are therefore, not shown on the muster rolls of the industrial units.

(4) **Problem of Housing**: Housing is perhaps the biggest problem that the migrant workers. It has been revealed by
the migrant workers that they prefer to work with an employer who offers free residence with adequate supply of water even if they are paid a little less. In the agricultural employment the facilities offered by the farmers on the tubewells and in the busy seasons when the number of such workers happens to be quite large, the common place in village like panchayat ghar etc. are also used for accommodating the migrant workers in the village. Sometimes a very poor accommodation in the name of residence is provided by the rice shellers and the brick kilns as well. But the migrant workers have to face the problem of housing in industrial units. There has been practically no efforts by the employers and the Government in this direction.

(5) **Long Hours of Work** : The migrant workers are subject to work for long hours of work. The small scale units where this category of labour is more engaged are not subscribing to forty eight hours a week work. In such establishments the normal work day for a workman remains to be twelve hours and the same operates for the local workers as well. In the agricultural sector and in brick kilns the hours of work are definitely more and their is no concept of a weekly rest. Therefore, the statutory provisions laid down in this regard are not followed by the employers.
(6) **No Equal Wages for Women** : The study has revealed that the women migrant workers are not getting equal pay for equal work which is a necessary obligation imposed upon the employer by Equal Remuneration Act. Although male and female migrant workmen are engaged in the work of similar or same nature yet the woman migrant workmen are getting less wages then their male counterparts. Almost all the female migrant workmen have admitted the fact that they are not getting equal pay for equal work.

(7) **No Back Journey Allowance** : It is a fact that migrant workers have a strong sense of attachment with their home places and for this reason they have to go back at periodic intervals. This taxes them a lot in the name of to and fro, train fairs, unpaid holidays and also many times the loss of a job causing thereby some days of forced unemployment after their return at their workplace. The employers never pay the fairs for such visits.

(8) **Trade Union Apathy** : Migrant workers have noticed that the trade unions show a sense of reluctance in taking up the issue relating to migrant workmen. When they need any help they allege that the leadership favours the local people and their interests are sacrificed.

(9) **No Journey Allowance** : The study has revealed that a majority of the migrant workmen does not receive journey allowance from the contractors. Therefore, they have to
travel from their native place to the place of employment at their own expenses. However, the ISMW Act, 1979 makes it mandatory for the contractor to give them journey allowance.

(10) **No Medical Facilities** : It is evidently clear from the study that none of migrant workmen had received free of cost medical facilities from their contractor or principal employer. In case they suffer some injuries during the course of work a minimum level of medical facilities are provided to them. In case they raise voice for getting permanent treatment then they have the fear of loosing their job. Therefore, they prefer to remain silent than to raise their demand.

(11) **No Safe clothing** : During the course of study the researcher has found that the contractors do not provide the migrant workers safe clothing as per the nature of work. It implies that the contractors are violating the provisions of ISMW Act, 1979.

In view of the above discussion and after analysing and evaluating the statutory provisions in addition to the Rules made thereunder relating to inter state migrant workers, judicial approach from time to time and the responses sought from the migrant workers, the following suggestions/recommendations have been made by the researcher.
(1) It must be ensured by the concerned authorities that the provisions of Minimum Wages Act are enforced and in no situation migrant workmen should get less wages than the wages laid down under Minimum Wages Act.

(2) There must be a regular payment of wages to the migrant workmen in all the establishments where they are working. Consequently the provisions of Payment of Wages Act should be followed in their true letter and spirit.

(3) Being welfare State it is the duty of the State to ensure that social security benefits are not denied to the migrant workmen.

(4) The problem of housing of the migrant workmen should be taken up on top priority by the concerned authorities. Consequently they must be provided with adequate supply of water and hygienic conditions to live in.

(5) The concerned authorities must ensure that the migrant workmen are not compelled to do work in excess of the working hours prescribed by the law. In addition to it a weekly rest must also be provided to the migrant workmen. By doing so their health can be protected which will ultimately lead to the enhancement of their working capacity.
Equal pay for equal work is a Constitutional and statutory requirement. In no case the women migrant workmen should be given less wages than their male counterparts for doing the same or similar nature of work. The concerned authorities must ensure that the principle of equal pay for equal work is followed by those engaging migrant workers.

The concerned authorities must ensure that the migrant workmen are given the back journey allowance for visiting their native place.

Although, the migrant workers are not united by way of their union yet the trade unions should show a sense of responsibility by way of taking up the issues relating to migrant workmen.

It must be ensured by the concerned authorities that journey allowance is given to the migrant workmen for moving from one place to another place.

The migrant workmen must also get medical facilities, pure drinking water and hygienic conditions to live in. It must also be ensured by the authorities that safe clothing is also provided to migrant workmen.
(11) The amount collected in the form of provident fund contribution must be delivered to the migrant workmen at the time of leaving their job. He must also be informed regarding the quantum of the provident fund so collected periodically.

(12) It is the duty of a welfare State to provide social security to the workers. The present laws providing social security to migrant workers are inadequate and merely an eye wash. Therefore, keeping in view the huge size of migrant workmen it is the need of the hour to enact certain laws providing social security to them.

(13) Section 11 of ISMW Act deals with the procedure for making an appeal to an appellate officer. But an analysis of this section reveals that no time limit for the disposal of appeal has been laid down by this section. Therefore, it is suggested that the provision should be amended accordingly.

(14) The power to decide the dispute or disagreement regarding the suitability or adequacy of accommodation referred in Rule 45 should also be conferred upon the officials of the labour department of the State Government because, the State officials can be easily approached by the
migrant workmen than the Central Government Officials.

(15) The appropriate Government should impose heavy fine upon the contractor in case he fails to perform the obligations imposed upon him by the ISMW Act. Under section 24 of ISMW Act the imprisonment of two years should be increased upto three years and the fine may be increased from two thousand rupees to five thousand rupees. Such enhancement is justified because of the fact that principal employers and the contractors are frequently violating the provisions of the Act. Therefore, the imprisonment and the fine should be a deterrent factor for them.

(17) The ISMW Act does not provide for any punishment or fine for continuing offence. This is a serious lacuna in the Act. Therefore, the Act should be amended accordingly.

(18) Section 29 of ISMW Act lays down the limitation period for making a complaint under the Act. However, prior sanction of the Inspector is a must for instituting the suit under the Act. It is equally true that seeking prior sanction of the Inspector is a long process, which generally takes a long time. Therefore, keeping in view the interest of migrant
workmen it is suggested that the time taken by the Inspector for granting sanction to institute the suit should be excluded from the limitation period of three months provided under the Act. Hence, the Act should be amended to this effect.

(19) The concerned authorities should leave no stone unturned for the purpose of implementing all the laws enacted for migrant workmen according to their true letter and spirit.

(20) The National and State Social Security Boards Constituted under Unorganized Workers' Social Security Act, 2008 should be made more effective by way of giving more powers to them.

(21) The Unorganized Workers' Social Security Act, 2008 must contain a provision for the creation of a Social Security fund for unorganised workers.

(22) The Unorganized Workers' Social Security Act, 2008 should be amended so as to provide a strong grievance redressal mechanism.