CHAPTER – 8 - CONCLUSIONS AND SUGGESTIONS

Having examined in detail, the condition of Indian migrant workers in Saudi Arabia and the regulatory framework governing such migration, it is hoped that this thesis has been able to highlight the ground realities in Saudi Arabia, India, and in the context of international instruments. In this Chapter, the summary of conclusions reached and suggestions made shall be highlighted.

8.1 CONCLUSION:

Among all the conclusions prescribed in the thesis, few remarkable incidents are highlighted below:

(i) Chapter I reveals that human migration has been in existence, since the past 11000 years; therefore the study does not deal with a recent phenomenon. What has changed dramatically during the intervening period, is the nature of migration, the circumstances in which migration take place, the treatment meted out to the migrant on his arrival at the destination.

(ii) Chapter II finds that because of reasons of demography and the disinclination of the local population, the Saudi labour market is a typical labour – deficit market; the labour participation rates of the local population and their disinclination to take up jobs involving physical labour, result in the dependence of Saudi economy on migrant workers. This is the perspective from the local country: in respect of the home country, it is found that the dynamics of its own labour market have an impact on the migration process.

(iii) Chapter III reveals that the Saudi labour market was dependent upon the migrant workers. This Chapter shows that exploitation of migrant workers in Saudi Arabia, is not restricted to any one nationality or religious denomination or even gender. The women migrant workers in the Gulf region are subjected to inhuman treatment. It is not only in the host country that migrant workers are exploited, they are also exploited in the home country also, this is also true in the context of recruiting agents who play a
dubious role in the migration process. The Home States cannot shut their eyes to this gross exploitation. The findings have been validated by a field study.

(iv) Chapter IV reveals that a large number of deficiencies in the Saudi legal system. Broadly there are two problems – one, the implementation of the law appears to be very lax; two, while there are comprehensive regulations in place for employment in the public service, the legislation for the private sector employment is inadequate. Almost all the problems faced by the migrants is in the private sector employment and that deficiency, the Legal Framework does not address and the penal system for violation by employers is extremely inadequate.

(v) Chapter V supplements the findings of Chapter IV by observing that Saudi Arabian legal framework is grossly inadequate not only when compared with ILO instruments, but also, in relation to the League of Arab States norms. In effect we are left with a deficient legal framework which perpetuates the exploitation of migrant workers. In the overwhelming gloom of the situation, there is none to take note of it.

(vi) Chapter VI, while analyzing Indian Legal System and Emigration Act 1983 finds that the Act of 1983 does not meet the requirement of the present day situation; the role of recruiting Agents, which has been found to be dubious, is not adequately regulated; the penal provisions have no teeth to work as a deterrent; the offices of the Protector of Emigrants on the basis of evidence on record, are not discharging their duties properly. If the Home State is negligent about its duties towards the migrant workers, how the blame can be imposed upon the Host Country.

Though the Government of India have made a comprehensive regulatory framework through Inter-State Migrant Workers (Regulation of Employment and Conditions of Service) Act 1979 for Inter-State migration of workers, the Act is not made applicable for the inter-national migration. It is vehemently
deplorable. Inaction on the part of the Government of India is inexcusable. In this Chapter some of the major labour laws of India are discussed to show how the laws are made available to the workers working in India in the organized sector. But the ‘Cost’ which the Indian Migrant Worker ‘Pays’ for migration is the denial of beneficial protection. Therefore an automatic question arises. Whether the higher wage that he earns in Saudi Arabia, is adequate to compensate the ‘Cost’.

(vii) Chapter VII whilst describing the historicism of migration reveals that the condition of migrant workers is exploitative and difficult, not only in the Asia put even in Europe. The geography is not a limitation of the exploitation of migrants. Here again we find a danger in the migration process due to globalization furthered by WTO due to trade in manpower. It is necessary that all parties to the migration process should take notice of disorderly migration of today.

(viii) Chapter VIII concludes the thesis by making few suggestions enumerated in this Chapter.

8.2 OBSERVATIONS

8.2.1 THE CONDITION OF MIGRANT WORKERS – Continuous Exploitative System

Indian migrant workers have been working in the Gulf regime since nearly one hundred years. Their condition as migrant workers, has, unfortunately, not undergone any major change; as a matter of fact, in real terms, it may be said to have detoriated. For various reasons, elaborated earlier, despite the efforts of the Saudi Government, the country’s dependence upon migrant workers is bound to continue. If urgent remedial steps are not taken, it is imminent, that, exploitation of migrant workers would continue and be perpetuated. To reinforce our observations, it would be expedient to summarize the main features of conditions of Indian migrant workers in Saudi Arabia.
a) In the absence of a typical labour market, the Saudi Labour Market is actually a conglomeration of nationalities; how a worker is treated, what wages he may receive, etc. is dependent upon his nationality;

b) The employment in the private sector is controlled by Kafeels, or sponsors, without whose intervention, it is not possible to gain entry into Saudi Arabia; this is an ingenious method of keeping wages low, by restricting entry into the country; there is intense competition amongst migrant workers, who try to enter the country; therefore, by this method, the Saudi labour market defies well settled economic principles determining wage, and wages are kept low, when in fact they should rise, given the shortage;

c) The employment contract, is susceptible to unilateral change, once the migrant worker lands in Saudi Arabia; he is faced with two options – one, he may return to India, and lose everything in the process, and be barred for reentry within the stipulated period; two, he may take up employment on renegotiated terms, which works to his detriment.

d) The renegotiated contract hurts the migrant and benefits the employer in another way – to compensate his loss in wage, the migrant is forced to work higher hours for overtime salary, often for 10-12 hours every day; the employer benefits because he does not have to engage another hand to do the work.

e) This brings us to the question of blatant violation of the Labour Code – one such example is the total number of hours put in by the migrant worker, which is far in excess of the limit prescribed – but there does not appear to be any deterrent.

f) The living conditions of migrant workers is extremely difficult; it is not a chance that migrant workers have little leisure at their disposal – this eases the burden on the living quarters;
Religions discrimination is a significant feature of the Saudi Labour Market. and non-Muslims lead a very difficult life.

Female migrant workers are in a desperate situation, and are the most vulnerable amongst all the migrant workers.

The above represents some of the major characteristic features of the migrant’s existence in Saudi Arabia. This is not the cause of anguish; what is more difficult to comprehend is, how does this happen, despite the provisions of the law – Saudi, Indian and International.

8.2.2 THE SAUDI LEGAL SYSTEM – A Blunt Bunker to Migrant Workers
This is one of the key features of this thesis, and many of the problems of migrant workers lie in this area. The Basic Law is the bulwark of the Saudi legal system, in terms of statute. Some of its articles, viz., Articles 17, 26, 36, and Article 47 provide for and guarantee many fundamental rights to expatriate workers. One example shall suffice – Article 47 guarantees equality before the law to the citizen and expatriate. we have seen how the ground reality of Saudi Arabia is against the expatriate – be it wages, working conditions or living conditions. This dichotomy between the law and practice, is extended to the Labour Code, which has been examined in detail.

As a ready reference, if we consider the provisions of Sections 91 to 95 (both inclusive) which deal with the obligations of the employer, our study shows that in the private sector the provisions of those Sections are breached more often than implemented. Section 91 states that the employer shall treat his employees with due respect and refrain from any word or act that may affect their dignity or religion. In Chapter 3, examples have been cited about the type of treatment that is often noted to migrant workers. Section 92 states that employers must pay the wages contracted for; it has been stated elsewhere in this thesis, that renegotiation of the contract is a common practice in Saudi Arabia, and, of course, the wage is only reduced.
It needs to be explained, as to how can the practice be so different from the provisions of the law. A possible explanation could be that the Labour Code does not provide adequate penal provisions for non-compliance of the provisions of this Code. As a matter of fact, Chapter XII of the Code which deals with penalties, is more concerned with strike, lockouts and stoppage of work, rather than, penalties for violation of the Code, which is given secondary importance. Consequently, there is no pressure on the Saudi employer to comply with the Code. The other possibility could be that, the Code does not provide any real grievance redressal system to the expatriate migrant worker.

For Indians, familiar with the provisions of the Industrial Disputes Act, 1947, this is a serious lacunae in the Code. In case the migrant worker has a grievance against his employer, the dispute resolution mechanism, as provided for, in Chapter XI, is not only difficult, but highly ineffectual. The migrant is unfamiliar with the official language; he is also unfamiliar with the legal system and legal processes; he is also, with deficient resources. All this combines to make the relief seeking mechanism quite ineffective. We therefore find that, the Saudi legal system is weak, both on penalties and in reliefs.

If Saudi Arabia is really interested to improve the legal mechanism relating to migrant workers, it must do two things:-

a) it must make suitable penal provisions against employers for violation of the Code;
b) it must incorporate a friendlier grievance redressal system, which can provide some succor to migrant workers.

8.2.3 THE INDIAN LEGAL SYSTEM –
Non Credible Deterrence to Exploitation

The provisions of the Emigration Act, 1983 have been examined in detail in Chapter 6. Coincidentally the issues raised by the Saudi Labour Code are to be found in this Act also – viz. negligible penal provisions and no inbuilt grievance redressal system.
A few examples would suffice. Sub-section (3) of Section 11 stipulates that the amount of security deposit to be furnished along with the application for registration should not be less than one lac rupees; this amount is levied to inter alia, cover the cost of repatriation of any migrant worker, recruited through the agent; this amount is largely inadequate to meet the requirement of air travel. Such amount may cover only a few such workers. Section 14 deals with cancellation and suspension of licenses. One of the condition for which his certificate can be cancelled, is contained in clause (a). It is notable that, to get the agent's licence cancelled, the migrant worker would need to proceed against the agent under the Criminal Laws. This is a deterrent for the migrant, rather than for the agent.

Chapter VII of the Emigration Act, 1983, dealing with penalties, is hardly expected to operate as a deterrent; the penalty imposed could be as low as rupees one thousand, when, we have evidence that they may collect as much as Rs.60,000 as fees, of course, illegally. When this is read with Rule 25 of Emigration Rules, 1983, which limit fees to agents to Rs.2000, the entire matter looks ridiculous. It is an open secret that recruiting agents are routinely charging amounts in excess of this figure; yet, neither the limit of legal fees is raised to realistic levels, nor does the Government take any action to curb this malpractice.

Therefore, we found that in the Emigration Act, 1983, there is neither a credible deterrence, nor, the hapless migrant worker is afforded a reasonable and realistic opportunity to get his grievances redressed. There is an urgent necessity to get this lacunae rectified.

The Inter-State Migrant Workers (Regulation of Employment and Conditions of Service) Act, 1979, was discussed as a cognate provision; in this Act, certain beneficial provisions have been made for the protection of Inter-State migrant workers, within the country. To make the life of the Indian migrant workers safer and better, it is necessary that such of these beneficial provisions should incorporated in the Emigration Act, 1983, so that Inter-State and inter-national migrants may enjoy the same or similar protection. It is not a coincidence that the objects and
reasons of this Act, address issues which are very similar to the issues facing international migrants.

Section 12 of the ‘Inter-State Migrant Act’ lists the duties of the contractors – they are, inter alia, to issue to every migrant worker, a pass book, with photograph, to show the amount of wages paid to the worker. A similar provision could be made in the Emigration Act, 1983, that every expatriate worker must file a copy of his wage bill with the Protector of Emigrants – this could lead to a verification, as to whether the migrant worker is actually getting the wage which was contracted. If data of all expatriate workers is maintained in a computerized data-base, such an exercise would not be difficult to implement.

As stated earlier, it is necessary that India should tone up its legal system, which deals with migrant workers, because, if we are not ourselves concerned about the plight of our citizens, why should we expect a benevolent attitude from others. As the world is now witnessing a surge in demand of Indian I.T. professionals, we should take advantage of this situation, and institutionalize an appropriate legal framework, so that, at least in the future, the plight of migrant workers could improve.

8.2.4 INTERNATIONAL INSTRUMENTS – Non-effective Weapon

In Chapter 5, we have examined the role of the ILO and examined the various ILO and UN instruments. The object of such an examination was to compare the Saudi legal system with international standards and by implication show, what improvements could be made in them.

Admittedly, the Constitution of the ILO does not permit the ILO playing an increased and active role; at best, it could persuade members to improve the legal framework - even though it cannot compel them to ratify its Conventions.

8.3 SUGGESTIONS

Keeping in mind the limitations inherent in the system, suggestions have to be realistic. In this context, the following specific suggestions are made:
a) Invoking the provisions of Article 19 of the ILO Constitution, it must be ensured that those states which have not ratified C97 and/or C143, submit detailed reports on the state of law and practice on this subject.

b) On receipt of such reports, they must be scrutinized and Member States may be persuaded to take steps necessary to bring their laws and practice, in as close proximity to these conventions, as local conditions may permit.

c) The Committee of Experts which is expected to scrutinize such reports, should take urgent steps, to revise the provisions of C97 and C143, and possibly merge and integrate the two conventions.

d) It is also necessary that, further action needs to be taken on an urgent basis arising out of the Tripartite Meeting of Experts held in April 1997, when two sets of guidelines were adopted. The guidelines address two major worries - vulnerable migrants and malpractices of recruiting agents, which have been documented in this thesis.

e) ILO plays an important role in making available technical cooperation and technical advisory services to both home and host states; it is hoped that India would take the initiative, and seek ILO’s assistance in improving the lot of its migrant workers; as a first step, it is suggested that the ILO’s help should be taken to augment the database in respect of migrant workers, as credible data about Indian migrant workers is hard to source.

The suggestions about the role of the ILO have been made, keeping in mind that it has severe limitations on its functioning and effectiveness – so, such things which are not possible for it to achieve in the near future, have not been suggested.

It was hoped that the Arab Labour Organization, being a regional body, would have been able to play a more active role; but, even its Conventions are not implemented by its Member States. As time passes, it would seen that the importance and relevance of the ALO would further diminish. It’s dependence, atleast financial, on the major oil producing States, like Saudi Arabia and Kuwait, greatly limit its
position as a regulator. In sum, there appears little that the League of Arab States and the ALO would be able achieve.

8.4 PATH TOWARDS THE FUTURE

As time passes, it is expected that migration would play an increasingly critical role in the world economy. Despite efforts at indentization of labour, manpower movements across nations would continue. So, the emphasis should not be on controlling migration, but on regulating migration. If the latter step is taken, then, it will lead to a Win: Win Situation, where the home, host and migrant worker, all three would benefit.

This thesis is a small attempt to highlight the problems of migration, in respect of one geographical location; there may be many other areas in the world, where such malpractices may be replicated – it is not possible to highlight them all. It is hoped that, this small effort would have highlighted a critical problem, and it is also hoped that, if some of the remedial steps suggested are taken, then, the situation would substantially improve.

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