INTRODUCTION

In a celebrated lecture, titled “The Work Before Us”, delivered at the Triplicane Literary Society, Madras. Swami Vivekananda said: “One atom in this universe cannot move without dragging the whole world along with it. There cannot be any progress without the whole world following in the wake, and it is becoming every day clearer that the solution of any problem can never be attained on racial, or national, or narrow grounds. Every idea has to become broad till it covers the whole of this world…”1 Any study of globalization can well begin with an analysis of the writings of Swami Vivekananda. However, our purposes will be served, by merely using the above quote as a spring board, to introduce this thesis.

This study is not so much about globalization, perse, as about the impact of globalization on one aspect of human life – migration. Human migration is one of the earliest manifestations of globalization – people moving across national frontiers predicated upon by diverse reasons – natural calamities, war and conquest, economic expansion and the like. This study attempts a study of one such migratory movement – from India to the Middle East and more specifically to Saudi Arabia. Indian diaspora to the Middle East is now nearly a hundred years old; during the last twenty five years, the numbers surged and are now settling down into a regular pattern. Why Indians migrate to the Middle East? What benefits do the migrants derive from this migration? What benefits accrue to the economies of Saudi Arabia and India? What is the regulatory mechanism, which governs this migration? Is this regulatory mechanism adequate and comparable with international standards? Is this diaspora an isolated phenomenon, or do parallels exist elsewhere? These are some of the questions which are raised in this thesis.

An ILO study2 says that international labour migration is currently a global phenomenon and few countries remain completely unaffected by it; e.g., in 1970, 64 countries were major senders or receivers of migrant labour; in this study we shall

---

refer to them as home and host countries, respectively. By 1990, this figure had increased to over 100. One consequence of this spread in the source and destination of migrants is that, the number of migrants, overall has also tended to rise. Of course, the figures of demand and supply for host and home countries, tends to fluctuate, overall, the net figure shows an upward movement which is illustrated.

It is seen that, for countries like India, Bangladesh and Pakistan, the overwhelming majority of migrant workers were going to the Middle East countries. During the intervening period, this trend has evened out a bit, with the increase in the number of technical workers, who are going to USA, Europe, etc. But, by and large, the above trend would be continuing to persist.

One major benefit for the home country, like India, besides reducing the pressure on the employment market, migration is the source of valuable foreign exchange, which is received in the form of remittances from migrants. In 1977, the total remittances from migrants in the Middle East was US $ 303 million, which represented 43.4% of the total remittance received from all migrants; in the year 1985, this figure had increased to US $ 1442 million, which represented 57.5% of the total remittance received from all migrants. Not only did the quantum of foreign exchange earned increased more than four times in eight years, the share of migrants in the Middle East, increased from less than half to nearly 60%.

Therefore, migration is important for India, and migration to the Middle East is of greater importance. Therefore, this thesis studies and examines the socio-legal aspects more specifically the legal aspects of Indian migration to the Middle East, with special reference to Saudi Arabia.

The thesis is divided into eight chapters. The first chapter examines the history of migration; some characteristic features of migrant workers; the reasons and causes for migration; the position of the migrant vis-à-vis the home and host country; the history of migration in relation to the Middle East; and the conditions of work available to migrant workers in the Middle East. Such an exploratory examination of migration is necessary because, it is necessary to fix the theoretical basis of
migration, generally, and then relate it to the specific region of our study, i.e. the Middle East and Saudi Arabia. The chapter examines the causes of migration, which maybe summarized as “push” and “pull” factors. Migrants get pushed from labour surplus areas and are pulled in by labour deficit areas. The condition of the migrant worker is also briefly examined in this chapter - it is indicative enough of the various difficulties that migrants face in the host country. The chapter examines in detail the position of the migrant in the home and host States. The chapter concludes with an introductory analysis of the position of the migrant worker in the Middle East; this is developed further in a later chapter.

The second chapter examines the theories of employment, especially those factors which affect the demand and supply of labour. The major purpose of migration, in socio-economic terms is to balance the demand – supply gap. Where demand is high and supply is low, i.e., supply is unable to meet the demand, then, the shortfall may be met by in-migration. Conversely, the area which has excess supply over demand, can ease its pressure on the job-market, by exporting some of its excess manpower. Therefore, it is necessary to set the basic characteristic features of a labour – market of Saudi Arabia. In effect, the objective is to set out the theories relating to employment, and then match them with the realities on the ground.

The third chapter examines in detail the characteristic features of the Saudi labour market, both theoretically, and, empirically. This chapter will give a fair indication about the country perse, its economic history, and, its labour market. The chapter highlights the various significant events of the Saudi economic history; it is seen that its economic development, in the modern sense, got a quantum jump in 1933, when an agreement was executed with ARAMCO; this oil development agreement triggered off the process of economic development. To man this growth, from the beginning itself, the Saudi economy was dependent upon migrant workers – in the first phase Americans and Europeans and Indians; then other Arabs, and most recently, South Asians and East Asians. Indians have been found to be employed in the Middle East since the beginning of the 20th Century.
In this chapter, we have examined in great detail, the hardship that is meted out to migrant workers – none of this is theoretical, but, empirical; the sources are survey of literature (few and far between), media reports, and this writer’s field study in the District of Pathanamthitta, in Central Kerala. This district was chosen because it has one of the highest densities of expatriate population, and very significantly – all three major religious groups i.e., the Muslims, Christians and Hindus, migrate to Saudi Arabia from this district. The chapter reveals that exploitation of migrant workers in Saudi Arabia, is not restricted to any one nationality or religious denomination or even gender.

Significantly, it has been possible for this writer to substantiate all the theoretical formulations, through the field study; to that extent, it can be said that, all observations and findings have been validated in the field study.

The fourth chapter examines the Saudi Legal System. It begins by examining the role of Islam in Saudi Arabia (it is a staunchly Islamic country); the Saudi legal system does not follow any of the four Schools of Law – Hanbali, Shajii, Hanifi and Malikis – specifically; its legal system is based upon the Holy Koran, the Hadith. In this chapter, the following Saudi Laws and regulations are examined:- a) The Basic Law; b) Law of Council of Ministers; c) Majlis al Shura Law; d) The Labour Code – this specifically deals with the legal framework, within which migrant workers are to work; e) Employment Regulations of Non-Saudis in Public Service; f) Some Supplementary Regulations have also been examined, viz. (i) Model Disciplinary Rules; (i) Minister of Labour and Social Affairs Resolution number 89; (iii) Principal Guidelines for the Rules Regulation Work; (iv) Council of Ministers Resolution Number 826; (v) Circular of the Director-General of the Central Province Head Labour Office; (vi) Guide to the matter of Importation of Labour.

The fifth chapter examines the various international instruments in relation to Saudi Labour Law. An analysis is undertaken of the ILO, and its standard-setting mechanism, this is followed by a detailed examination of Convention 97 and Recommendation 86 and Convention 143 and Recommendation 151. This was necessary for two reasons – one, an objective test of a country’s legal system can be
made with relation to international standards, and two, the Saudi Labour Code had been drafted with the active assistance of the ILO. It was also decided to compare Saudi labour with regional standards, those of the League of Arab States, which should be more in tune with the local environment.

Chapter 6 deals with the Indian Legal System. As stated earlier, any study of migration has to contend with both the home and host states. The responsibilities of both have been discussed in Chapter 1. In Chapter 4 we discussed how the host state discharged its responsibilities to protect migrant workers. The results and conclusions are not very flattering. The home state has even a greater role to play in regulating the migration process, as the effected people are it's citizens. India has framed the Emigration Act, 1983, which regulates the out-migration of every citizen.

In this Chapter we have also examined the Inter-State Migrant Workers [Regulation of Employment and Condition of Service] Act, 1979; this is a cognate Act to our context; by virtue of this Act. India regulates Inter-State migration; the various protections, controls and regulations, which are provided for Inter-State migrants, must, also be made applicable to inter-national migrants.

A question has been raised in this thesis – why does an Indian migrate to the Gulf region? To put the questions in perspective, it is necessary to examine some of the major Indian labour statutes, where even these Acts are applicable – generally, the organized sector and to sort out the answer to the effect that had the Indian migrant worker not migrated to Saudi Arabia, but could get employment in the organized sector, what legal protection was available to him. The laws examined in this context are the Industrial Disputes Act, 1947, The Trade Unions Act, 1926, The Payment of Wages Act, 1936, The Payment of Gratuity Act, 1972, The Payment of Bonus Act, 1965 and The Workmen’s Compensation Act, 1923. These Acts, broadly represent the extent of beneficial protection of the Indian worker in the organized sector.

In Chapter 7, we examine the historicism of migration and its future trends. When we compare present day Indian migration to the Middle East, with the migration of
Indian indentured labour to Mauritius in the 1830s and 1840s, we find that, besides changes brought about by development in technology, e.g., mode of travel by air, instead of ship, there has not been much change in the plight of the migrant worker, during the intervening one hundred and sixty years. Not only has very little changed over time, but, the condition of migrant workers is exploitative and difficult, not only in the Asia, but, even in Europe. It has been found that Turks, and others from the Mediterranean rim, meet the same ill-treatment, which Indians face in Saudi Arabia. This notwithstanding the assumption that regulatory mechanism in Europe would be much stricter, than in the Middle East. That geography is not a limitation for exploitation of migrants is reinforced when we find that even in Singapore, migrant female workers are treated badly.

In this Chapter, we also highlight those factors, which will affect migration in the future. As globalization takes institutional form, furthered by the WTO amongst others, trade in manpower would see quantum jumps – possibly, the skill-mix of migrant workers will see a sea charge – the emphasis moving from unskilled, semi-skilled and skilled workers, to competent technologists and high-skill workers. Therefore, since the world economy is poised to see another spurt in the migration process, driven by technology, it is necessary that, all the parties to the migration process, should take notice of the disorderly migration of today.

In Chapter 8, we have summarized the conclusions of the thesis and also integrated all the suggestions. Suffice it to say at this stage that the ILO must take serious note of the present – day migration – its regulatory mechanism, even under the existing framework, can be made more effective. Why should it not take up the matter with the Government of Saudi Arabia, on the basis of reports which it receives? Admittedly, the ILO can not compel compliance; but, it can definitely bring pressure upon Member-States, by advices, to improve the legal framework governing migration. India, a major labour-supplying State must take initiative at the legal and diplomatic levels to improve the conditions of its migrants – improve the provisions of the Emigration Act, 1983, and ensure strict enforcement. It could, at the diplomatic level, take up the issue with Saudi Arabia, and a Protocol could be signed by the two countries. The Indian Government may not be keen to do this as, it may
fear that the Saudi Government could look to other countries, for cheap, unencumbered labour. Saudi Arabia, itself may be motivated to improve the conditions of migrant workers.

Workers groups in India must be organized to take up the cause of migrant workers: even if such efforts do not lead to the improvement of the situation in Saudi Arabia, at least, pressure could be brought upon the Central Government for a major overhaul of the Emigration Act; Indian trade unions are known to have exerted pressure on the Central Government, in relation to Indian laws governing Indian workers – and the Central Government is prone to take notice of such pressures – similar pressure could be brought in our context also.

Finally, a pious hope that the recruiting agents in India, would, impose self-regulation on themselves, so that the plight of their country-men could be improved to some extent.

It is hoped that the thesis would end in serving its objectives – one, to highlight the conditions of migrant and, two, to suggest methods of improving the same.

METHODOLOGY:
The law student in doing research on any subject of socio-economic legal problems is bound to follow various facets of research technique. One or some of the measures below is or are undertaken by the researcher in completing his research work to produce a thesis;

(i) Analytical - Finding out the existing law.

(ii) Historical - Finding out the previous law in order to understand the rationale behind the existing law and the course of evolution.

(iii) Comparative - Finding out what the law is in other countries and considering whether it can be drawn upon, with or without modification.

(iv) Statistical - Collection of statistics to show the working of the existing law.

(v) Critical - Finding out the defects of the existing law and suggesting reforms.
The critical diagnosis is based upon a questionnaire, and also.
(a) Public opinion, (b) Reports of Previous Committees, (c) Practical experience.
(d) Judicial decisions, (e) Academic Literature – Books and Journals.

It may be summed up that a legal researcher shall undertake generally the following methodology in completing socio-economic legal research: (a) Analytical. (b) Historical, (c) Empirical and (d) Critical.

In this thesis the above methods have been followed. It has become pertinent on my part to find out the existing law and the previous law in relation with the problems of migration. The researcher has collected data by interviewing the affected persons and has highlighted the deficiencies of the existing law.

All research is the gathering of evidence or information for ascertaining an assumption or verifying some hypothesis. Research is therefore, an enquiry for the verification of a fresh theory or for supplementing prevailing theories by new knowledge.

The researcher in doing this thesis has adopted all the methods as mentioned above for diagnosing the problems with the existing legal system and formulating some sort of panacea for the ills.