Chapter-5
JUDICIAL INTERPRETATION

The Indian Judiciary is an arm of social revolution. Judiciary is the apex authority to upholding the equality. The judiciary is the third and important pillar of democracy. Judiciary is act as the guardian of the Fundamental Rights. The Hon'ble Supreme Court of India has been called upon to safeguard the rights of the people and play the role of guardian of the social revolution. It is the great tribunal which has to draw the line between individual liberty and social control. Supreme Court of India is the highest court of appeal in civil and criminal matters and also the highest and final interpreter of the general law of the country. The judiciary has definitely become the last resort of the desperate poor.

The Judiciary has played significant role in the enforcement and interpretation of labour welfare and social security laws. It has innovate the new methods and devised new strategies for the purpose of providing access to justice to weaker sections of society who are denied their basic rights and to whom freedom and liberty have no meaning. Indeed the Court assumed the role of protector of the weaker by becoming the courts for the poor and struggling masses of the country.

The Judiciary also recognized several rights of workers in unorganized sector by its various judicial decisions. Judiciary has also shown serious concern on the appalling conditions of inter-state Migrant Workmen, a category of unorganized sector. In this Juncture, the present study examine the various momentous judicial decisions of the High Courts and the Apex Court of India, the observation made by them on migrant workers and evaluate the role of the judiciary in protecting and safeguarding the interest of migrant workers.

5.1. Importance of Judicial Response

Judiciary is not expected to sit in an ivory tower like an Olympian closing their eyes, uncaring for the problems faced by the society. They have to exercise their judicial

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214 Sri Alladi Krishnaswamy Aiyer, Member of Drafting Committee, ibid.
215 http://shodhganga.inflibnet.ac.in/bitstream/10603/57426/12/12_chapter%207.pdf
powers for protecting the fundamental rights and liberties of the citizen of the country. Therefore, in order to achieve the mission the judiciary has to exercise and evolve its jurisdiction with courage, creativity and circumstances and with vision, vigilance and practical wisdom.\textsuperscript{216}

According to Article 13 of the Indian Constitution enhance the power of the judiciary to make review of the existing law for the time being. The concept of the independence of judiciary is considered as the basic features of the Indian Constitution. The role of judiciary is very important in providing socio-legal justice to the poor and weaker section of the society, i.e. poor farmers and workers engaged in the organized and unorganized sectors as well. We know that judiciary is one of the important organs of the government and may call as last resort to knock the door. When there occurs massive violation of human rights then judiciary play the active role to uphold the rights through the innovative mechanism like PIL and judicial activism policy. It is the Constitutional mandate of judiciary to safeguard the rights of the citizens. Supreme Court and High Courts are empowered to take action to enforce the human rights. Under Articles 32 and 226 of the Indian Constitution an aggrieved person can directly approach to the Supreme Court or High Court for the protection of his and her fundamental rights. In that case the Court is empowered to issue appropriate orders, directions, and writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo-Warranto and Certiorari.\textsuperscript{217}

5.2 Judicial Observations of Different Countries

Everywhere in the world judiciary plays the important role to protect the rights of the workers. When law remain silent on the particular issue of violation of the rights of the workers then judiciary use the principles of equity and good conscience. So it is very necessary and useful to overview the role of judiciary in dealing with matter related to the protection of rights of the migrant workers in United Kingdom, United States of America and India.

\textsuperscript{216} Dr. J.N.Pandey, 'Constitutional Law of India', 44\textsuperscript{th} Edition, 2007, p.360.
5.2.1. American cases

American judiciary always tries to protect the rights of the legal immigrants as well as the immigrants who are entered with using of improper channel. There are various decisions given by the American Court to protect the right of the migrant workers.

(i) Recinos vs. Express Forestry218

The brief fact of the case is that on April 7, 2005, class representatives, Hugo Martin Recinos, Pablo Alvarado Recinos and Alberto Alvarado, filed the captioned class action lawsuit. The collective/class action allege that during the plaintiffs and putative class member’s employment with Defendants, Express Forestry, Rick Thomas and Sandy Thomas, they systematically violated the provisions of Agricultural Worker Protection Act (AWPA) and the Fair Labour Standards Act (FLSA). The action was brought on behalf of a class of over 300 predominantly Guatemalan and Mexican migrant workers who planted trees and performed other forestry-related tasks for the defendant’s seasonal business.

Plaintiffs’ claims under AWPA based on their employment in defendants forestry operations. The AWPA claims alleged include: (1) that defendants failed to timely furnish plaintiffs with written disclosures pursuant to the provision of the Act (2) that defendants knowingly provided false and misleading information about the terms and conditions of employment, (3) that defendants failed to make, keep, and preserve accurate records concerning plaintiffs' employment pursuant to the Act (4) that defendants failed to furnish accurate records to employees each pay period; and (5) that defendants imposed a void term and condition of employment purporting to waive or modify plaintiffs' rights under the AWPA.

As part of the Court's approval of the Settlement Agreement, the district judge entered an injunction under AWPA ordering the defendants to pay workers complete and appropriate wages when due and comply with the working arrangements made between the parties. Defendants (Express Forestry) also agreed to refrain from requiring workers to either temporarily or permanently surrender passports, visas and other identification documents to the defendants or any of their employees or agents. Defendants further agreed to make certain disclosures to their workers,

including an anti-retaliation notice that was to be provided to plaintiff's counsel in the worker's native language for editing and review prior to distribution to the workers. Defendants pledged to comply with AWPA and FLSA and any other applicable laws in their employment with any and all workers.  

(ii) Rivera v. Brickman Group

Rivera and the other plaintiffs are citizens of Guatemala and Mexico who worked as seasonal landscapers for defendant the Brickman Group between 2003 and 2005. Brickman petitioned for and was granted temporary work visas for the plaintiffs and the programme is commonly known as H-2B programme allows U.S. employers to petition the Department of Labour for permission to employ non-agricultural foreign workers for periods of less than one year. Though plaintiffs’ cash wages appeared to comply with all applicable laws, plaintiffs claim that Brickman forced them to pay for employment-related costs out of pocket. These costs, they contend, operated as de facto deductions that reduced their real wages below the applicable minimum wage.

The basic facts are not in dispute. Brickman employed plaintiffs to perform seasonal landscaping services between 2003 and 2005. Plaintiffs were paid cash wages that, on their face, exceeded both the (Fair Labour Standard Act) FLSA minimum and the higher H-2B minimum. Plaintiffs were responsible for their own transportation between their home countries and the Brickman worksites. In addition, they were responsible for the costs of securing passports and work visas, as well as any fees charged by the workers’ representatives that assisted them in completing the necessary paperwork. It is undisputed that these costs, if considered primarily for Brickman’s benefit, reduced wages below the FLSA minimum. In this regard the court held the employer liable for the recruitment fees, in addition to transportation and visa-related costs incurred by the employees to the extent it brought wages below minimum wage. This decision was significant for migrant workers because recruitment fees are routinely the most costly of the three relocation expenses.

219 https://www.casemine.com/judgement/us/5914b28cadd7b04934760876
221 http://scholarship.law.berkelev.edu/ and also see www.gpo.gov/fdsys/pkg/USCOURTS-paed-205-cv-01518/pdf
(iii) Arizona vs. United States

An Arizona statute known as Senate Bill 1070 was enacted in 2010 to address pressing issues related to the large number of unlawful aliens in the State. The United States sought to enjoin the law as preempted. The District Court issued a preliminary injunction preventing four of its provisions from taking effect. Section 3 makes failure to comply with federal alien-registration requirements a state misdemeanor; §5(C) makes it a misdemeanor for an unauthorized alien to seek or engage in work in the State; §6 authorizes state and local officers to arrest without a warrant a person "the officer has probable cause to believe . . . has committed any public offense that makes the person removable from the United States"; and §2(B) requires officers conducting a stop, detention, or arrest to make efforts, in some circumstances, to verify the person's immigration status with the Federal Government. The Ninth Circuit affirmed, agreeing that the United States had established a likelihood of success on its preemption claims.

In this case Justice Kennedy's majority opinion held that Sections 3, 5(C), and 6 were preempted by federal law. The three provisions struck down: required legal immigrants to carry registration documents at all times; allowed state police to arrest any individual for suspicion of being an illegal immigrant; and made it a crime for an illegal immigrant to search for a job (or to hold one) in the state. All justices agreed to uphold the provision of the law allowing Arizona state police to investigate the immigration status of an individual stopped, detained, or arrested if there is reasonable suspicion that individual is in the country illegally. However, Justice Kennedy specified in the majority opinion that state police may not detain the individual for a prolonged amount of time for not carrying immigration documents; and that cases of racial profiling are allowed to proceed through the courts, if such cases happen to arise later on.

223 On April 23, 2010, Arizona Governor Jan Brewer signed into law SB 1070, which supporter dubbed the 'Support Our Law Enforcement and Safe Neighborhoods Act'. The Act made it a state misdemeanor crime for an illegal migrant to be in Arizona without carrying registration documents required by federal law, authorizes State and local law enforcement of federal immigration laws, and penalized those found to be knowingly hiring, sheltering and transporting illegal immigrants. And also see- Archibold, Randal C. (April 24, 2010), 'United States Toughest Immigration Law Is Signed in Arizona'. The New York Times, P.1.
Justice Kennedy's majority opinion identified the question before the Court as "whether federal law preempts and renders invalid four separate provisions of the state law." The four provisions in question were:

1. Section 3 of Arizona Senate Bill S.B. 1070, which made it a state crime to be unlawfully present in the United States and failing to register with the federal government;
2. Section 5, which made it a misdemeanor state crime to seek work or to work without authorization to do so;
3. Section 2, which in some circumstances required Arizona state and local officers to verify the citizenship or alien status of people arrested, stopped, or detained; and
4. Section 6, which authorized warrantless arrests of aliens believed to be removable from the United States based on probable cause.

The majority opinion analyzed the four provisions in question within the framework of preemption, derived from the Supremacy Clause, requiring that federal law will prevail when state and federal laws conflict. The Court held that 'the Federal Government has occupied the field of alien registration,' meaning that all state action, 'even complementary state regulation is impermissible'. Therefore, the registration provisions of Section 3 were preempted by federal law. In contrast to Section 3, the criminal provisions of Section 5 had no direct counterpart under federal law, leading the Court to apply the 'ordinary principles of preemption' rather than the doctrine of field preemption. Under those principles, Section 5 stood as an obstacle to the objectives of Congress of not imposing 'criminal penalties on aliens who seek or engage in unauthorized employment'. Therefore, Section 5 was also preempted by federal law.

Section 6 of Senate Bill 1070 was also found to be preempted by federal law on the basis that it created an obstacle to the full purposes and objectives of Congress. The Court noted that it is not generally a crime for a removable alien to be present in the United States, and that Section 6 would give state officers "even greater authority to arrest aliens on the basis of possible removability than Congress has given to trained
federal immigration officers. Furthermore, the removal process is "entrusted to the
discretion of the Federal Government.

The majority upheld Section 2, but did so by reading it in a more restrictive manner.
The provisions at issue required Arizona officers to make a "reasonable attempt" to
determine the immigration status of any person stopped, detained, or arrested on a
legitimate basis if "reasonable suspicion" existed that the person is an alien and is
unlawfully present in the United States. Justice Kennedy wrote that Section 2(B)
"likely would survive preemption" if it is interpreted only to require state officers to
conduct a status check 'during the course of an authorized, lawful detention or after a
detainee has been released'. Underlining the cautious approach that the majority took
to Section 2(B) were Justice Kennedy's final words on the section that 'this opinion
does not foreclose other preemption and constitutional challenges to the law as
interpreted and applied after it goes into effect.' 225

Board226

According to the brief fact of the case, Hoffman Plastic Compounds inc. hired Jose
Castro on the basis of documents appearing to verify his authorization to work in the
United States. After Castro engaged in union-organizing activities, Hoffman laid him
off. The National Labour Relation Board (NLRB) found that the lay-off violated the
National Labour Relations Act (NLRA) and ordered back pay for Castro. At a
compliance hearing, Castro testified before an Administrative Law Judge (ALJ) that
he was born in Mexico, that he had never been legally admitted to, or authorized to
work in this country, and that he gained employment with Hoffman only after
tendering a birth certificate that was not his. The ALJ found that Immigration Reform
and Control Act (IRCA) of 1986, which makes it unlawful for employers knowingly
to hired undocumented workers or employees to use fraudulent documents to
establish employment eligibility, precluded Castro's award. In reversing the Board
notices that the most effective way to further the immigration policies embodied in
IRCA is to provide the NLRA's protections and remedies to undocumented workers

225 https://en.wikipedia.org/wiki/Arizona_vs.United_States
in the same manner as to other employees. The Court of Appeals enforced the Board’s order.

In a majority opinion (5:4) delivered by Chief Justice William H. Rehnquist, the Court held that such relief is foreclosed by federal immigration policy, as expressed by congress in the IRCA. The Court reasoned that allowing the Board to award back pay to illegal aliens ran counter to explicit statutory prohibitions critical to federal immigration policy and that however broad the Board’s discretion to fashion remedies when dealing only with the NLRA was, it was not so unbounded as to authorize the award. ‘Congress has expressly made it criminally punishable for an alien to obtain employment with false documents. There is no reason to think that Congress nonetheless intended to permit back pay where but for an employer’s unfair labour practices, an alien employee would remained in United States illegally, and continued to work illegally, all the while successfully evading apprehension by immigration authorities’.227

5.2.2. United Kingdom Cases

U.K. Supreme Court also plays the vital role to protect the rights of the workers those who are entered in to secure their job. In case of violation of rights the Court handle the matter very strictly. Important decisions of the Court are enumerated below:

(i) Jessy Saint Prix vs. Secretary for State for work and pension228

The fact of the case was that Jessy Saint Prix is a French national who entered the UK on 10 July 2006 where she worked, mainly as a teaching assistant, from 1 September 2006 until 1 August 2007. At the beginning of 2008 Ms Saint Prix took up agency positions, working in nursery schools. On 12 March 2008, already nearly six months’ pregnant, Ms. Saint Prix stopped that work because the demands of caring for young children had become too strenuous. The claim for income support made by Ms. Saint Prix was refused by the UK authorities on the grounds that Ms Saint had lost her status as a worker. On 21 August 2008, three months after the birth of her child, Ms. Saint Prix resumed work. In the United Kingdom, income support is a benefit which

227 https://www.ovez.org/cases/2001/00-1595
228 (2012) UKSC 49
may be granted to certain categories of people whose income does not exceed a defined amount. Women who are pregnant or who have recently given birth may be eligible for that benefit, in particular during the period surrounding childbirth. However, 'people from abroad' (that is, claimants who do not habitually reside in the UK) are not entitled to that benefit, unless they have acquired the status of worker within the meaning of the directive on the right of free movement and residence of Union citizens.

In the judgment, the Court considers that a woman in the situation of Ms Saint Prix can retain the status of 'worker'. In support of its reasoning, the Court noted that an EU citizen who no longer pursues an activity can still retain the status of worker in specific cases (temporarily unable to work, involuntary unemployment or vocational training). The Court observed that the directive on the right of free movement and residence of an European Union citizen does not list exhaustively the circumstances in which a migrant worker who is no longer in employment may nevertheless continue to benefit from the status of being a worker. In any event, the directive, which expressly seeks to facilitate the exercise of the rights of an European Union citizen to move and reside freely within the territory of the Member States, cannot, by itself, limit the scope of the concept of worker within the meaning of the Treaty on the Functioning of European Union (TFEU). It is clear from the case-law of the Court that classification as a worker within the meaning of the TFEU, and the rights deriving from such status, do not necessarily depend on the actual or continuing existence of an employment relationship.

In those circumstances, the fact that the physical constraints of the late stages of pregnancy and the immediate aftermath of childbirth require a woman to give up work during the period needed for recovery does not, in principle, deprive her of the status of 'worker'. The fact that she was not actually available on the employment market of the host Member State for a few months does not mean that she has ceased to belong to that market during that period, provided she returns to work or finds another job within a reasonable period after confinement. Otherwise, an EU citizen would be deterred from exercising their right to freedom of movement if they risked losing their status as workers in the host Member State. The Court holds that, in order to determine whether the period that has elapsed between childbirth and starting work
again may be regarded as reasonable, the national court should take account of all the specific circumstances of the case and the national rules on the duration of maternity leave.\textsuperscript{229}

(ii) Taiwo vs. Olaigbe & another and Onu vs. Akwiwu & another\textsuperscript{230}

The U.K Supreme Court has unanimously dismissed the appellants’ appeals in cases considering whether the mistreatment of persons because of their position as vulnerable migrant domestic workers, dependent on their employers for their continued employment and residence in the UK constituted race or nationality discrimination, contrary to the Equality Act 2010. The issue in these appeals is whether the mistreatment of migrant domestic workers who are vulnerable because of their precarious immigration status amounts to direct or indirect race discrimination.\textsuperscript{231}

The appellant in the first appeal was a Nigerian national who came to the UK on a migrant domestic worker visa. The respondents were her employers. The appellant was seriously mistreated by the respondents, and successfully brought claims in the employment tribunal for failure to pay the national minimum wage, for unlawful deductions from wages, for failure to provide rest periods and for a failure to give her written terms of employment. However, her claim for racial discrimination was unsuccessful.

The appellant in the second appeal suffered similar experiences and was also a Nigerian worker in the United Kingdom on a domestic worker’s visa. She successfully brought similar claims in the employment tribunal, but the Employment Appeal Tribunal overturned the employment tribunal’s finding that there had been direct race discrimination. Lady Hale (J) gave the only substantive judgment.

The U.K Supreme Court held that neither appellant had suffered race/nationality discrimination, because they suffered abuse as a result of their precarious immigration status, rather than their nationality. Race was a protected characteristic under the

\textsuperscript{229} https://www.wired-gov.net/wg/news.nsf/articles/Judgement
Equality Act 2010, S. 13(1), and this included colour, nationality and ethnic origin. Nationality and immigration status could not be equated given that non British nationals may have a secure immigration status here and therefore not be vulnerable in the way that the appellants were. Parliament could have opted to include immigration status in the list of protected characteristics but did not do so. The treatment of the appellants was attributable to the nature of their visa, which made them dependent on their employers for continued residence, rather than their nationality. The Supreme Court also found that there was no indirect discrimination232.

5.2.3. Indian Cases

Indian judiciary play very vital role to upgrade the rights of the working class. The judiciary always very sensitive in regard to deciding the matter of the violation of the rights of the workers and always try to decide the matter on utmost priority. Here the issue of labour migration flow increase in India day after day and the rights of the workers are also violated simultaneously. In this respect the judiciary also response the matters suo- moto and sometimes the matter place before the judiciary through PIL and writ petitions.

The Judiciary in India recognized several rights of workers in unorganized sector by its various judicial decisions. Judiciary has also shown serious concern on the appalling conditions of Inter-State Migrant Workmen, a category of unorganized sector. In this Juncture, the present study examine the various momentous judicial decisions of the High Courts and the Apex Court of India, the observation made by them on migrant workers and evaluate the role of the judiciary in protecting and safeguarding the interest of migrant workers. There are so many cases decided by the Apex Court and Various High Court to upgrade the rights of the working class in India.

(i) B.Shah vs. Presiding Officer, Labour Commissioner\textsuperscript{233}

In this case the Hon’ble Supreme Court held that performance of the biological role of childbearing necessarily involves withdrawal of a woman from the workforce for some period. During this period she not only cannot work for her living but needs extra income for her medical expenses. In order to enable the women worker to subsist during this period and to preserve her health, the law makes provision for maternity benefit so that the women can play both her productive and reproductive roles effectively. Further, the court held that maternity benefit is to be made for the entire period of actual absence including Sundays.

(ii) Fancis Coralie vs. Union Territory of Delhi\textsuperscript{234}

In this case Justice P.N. Bhagwati has observed that ‘it is the fundamental right of everyone in this country to live with human dignity, free from exploitation. This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Article 41 and 42 and at least, therefore, it must include protection of the health and strength of the workers men and women, of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity, and no State has the right to take any action which will deprive person of the enjoyment of these basic essentials’.

(iii) Hussainara Khatoon vs. Home Secretary of Bihar\textsuperscript{235}

In this case the Hon’ble Supreme Court has held that it is the Constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of reasons such as poverty, indigence or incommunicado situation, to have free legal services provided to him by the State and the State is under a Constitutional duty to provide a lawyer to such persons if the needs of justice so require. If free legal services are not provided the trial may be vitiated as contravening Article 21.

\textsuperscript{233} (1977) 4 SCC 384
\textsuperscript{234} AIR 1981, SC 746
\textsuperscript{235} AIR 1979 SC 1377
Court has further held that speedy trial is an essential and integral part of the fundamental right to life and liberty enshrined in Art. 21.

(iv) Randhir Singh vs. Union of India\textsuperscript{236}

The Supreme Court has held that although the principle of 'equal pay for equal work' is not expressly declared by our Constitution to be a fundamental right, but it is certainly a Constitutional goal under Articles 14, 16, and 39(d) of the Constitution and therefore, capable of enforcement through constitutional remedies under Article 32. The doctrine of equal pay for equal work is equally applicable to persons employed on a daily wage basis. They are also entitled to the same wages as other permanent employees in the department employed to do the identical work. So this right can be enforced in cases of unequal scales of pay based on irrational classification.

(v) Asiad Village Workers Case\textsuperscript{237}

The case arose out of the denial of minimum wages, to workmen engaged in various Asiad project and non-enforcement of various Labour Laws. The People's Union for Democratic Rights (PUDR) an organisation formed for the protection of democratic rights, brought to the notice of the Supreme Court in 1981 for non - observance of labour laws, including the Inter - State Migrant Workmen Act, in relation to workmen employed in the construction work of various projects connected with Asian Games held at New Delhi. The judgment of the case is an epoch making judgment which has not only made a distinct contribution to Labour Law but has displayed the creative attitude of judges to protect the interests of the weaker sections of the society.

In this case, the court state that magistrates and Judges in the country must view violations 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 employer cannot be allowed to buy off immunity against violations 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

\textsuperscript{236} AIR 1982 SC 879
\textsuperscript{237} Peoples Union for Democratic Rights and others vs. Union of India and others AIR 1982 SC 1473.
amount of the fine. If violations of labour laws are to be punished with meager fines, it would be impossible to ensure observance of the Labour Laws and the Labour Laws would be reduced to nullify. They would remain merely paper tigers without any teeth or claws. The court held that the rights and benefits conferred on the workmen employed by a contractor under the provisions of the contract labour (Regulation and Abolition) Act, 1970 and the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 clearly intended to ensure basic human dignity to the workmen and if the workmen are deprived of any of these rights and benefits to which they are entitled under the provisions of these two pieces of social welfare legislation, that would clearly be a violation of Article 21 of the Constitution. It was also held that non-payment of minimum wage to the workers engaged in construction work would amount to not only violation of minimum Wages Act, but also Article 23 of the Constitution, which intends to prevent forced labour and beggar. The Court ruled the Minimum wage for the time being in force, or if the wage payable is higher than the minimum, such higher wage shall be paid by the contractors to the workmen directly, without the intervention of the Jamadars, and that the Jamadars shall not be entitled to deduct or recover any amount from the minimum wage payable to the workmen as and by way of commission or otherwise. In this case, the Supreme Court has championed the cause of several people engaged in construction work of Asiad Projects and rendered Justice.

(vi) Sanjit Roy vs. State of Rajasthan

In this case the Hon’ble Supreme Court held that the payment of wages below the minimum wages to the workers employed in famine relief work is violation of Article 23. Wherever any service is taken by the state from any worker who is affected by drought and scarcity conditions the State cannot pay him below the minimum wage on the ground that it is given to them to meet famine situation. The State cannot take any kind of advantage of their helplessness.

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238 AIR 1983 SC 328
(vii) Salal Hydro Project Case

This is one of those cases by way of public interest litigation where positive results have been achieved for the benefit of the workmen employed on the Salal Hydro Electric Project as a result of judicial intervention. The litigation started on the basis of a news in Indian Express dated 26 August, 1982 that a large number of workmen from different states including the state of Orissa were working on the Salal Hydro Electric Project in difficult conditions and they were denied the benefits of various labour laws and were subjected to exploitation by the contractors to whom different portions the work were entrusted by the Central Government. PUDR addressed a letter to Mr. Justice D.A. Desai enclosing a copy of the news report and requested him to treat the letter as writ petition so that Justice may be done to the poor labourers working the Salal Hydro Electric Project. The letter was treated as writ petition and observed: “The Union of India, the Delhi Administration and the Delhi Development Authority cannot fold their hands in despair and become silent spectators of the breach of a constitutional prohibition being committed by their own contractors. It cannot ignore such violation and sit quiet by adopting a non-interfering attitude and taking shelter under the excuse that the violation is being committed by the contractors and not by it. It is obvious, therefore, that the Union of India, the Delhi Administration and Delhi Development Authority cannot escape their obligation to the workmen to ensure observance of these labour laws by the contractors and if these labour laws are not complied with by the contractors, the workmen would clearly have a cause of action against the Union of India, the Delhi Administration and Delhi Development Authority.” On the delay in appointing authorities under the Act the Court observed:

“Unfortunately the bureaucratic apparatus for implementing the provisions contained in the Act and the Rules was not set up by the Central Government for a period of more than 20 months and it was only in the month of June, 1982 that the Central Government notified various authorities such as Registering Officers, Licensing officers and Inspectors.” Under Section 20(3) of the ISMW Act provides that the officers of the originating state can make enquiries in the recipient state provided the

recipient state grant permission to the originating state. This was coming in the way of proper implementation of the Act. To overcome this problem, the Supreme Court observed: This is a beneficial legislation for satisfying the provisions of the Constitution and the obligation in international agreements to which India is a party and passed the order that “every State / Union Territory in India shall be obliged to permit officers of the originating state of migrant labour for holding proper inquiries within the limits of the recipient state for enforcement of the Act and no recipient state shall place any embargo or hindrance in such process.

In this case the court added that if there are any advances repayable by the workmen to the Khatadars they may be paid by the workmen to Khatadars after they receive the full amount of wages due to them. But on no account can any deduction be made from such wages and they must be paid to the workmen directly without the intervention of any middleman. The court further added, the Central Government must ensure and that is the direction we give, that every payment of wages whether it is normal wages or overtime wages, shall be made directly to the workmen without deductions.

(viii) Bandhua Mukti Morcha case

In this case the Petitioner, an organization dedicated to the cause of release of bonded labourers in the country addressed a letter to Hon’ble Justice P.N. Bhagwati alleging (1) that there were a large number of labourers from different parts of the country who were working in some of the stone quarries situate in district Faridabad, State of Haryana under ‘inhuman and intolerable conditions’ (2) that a large number of them were bonded labourers (3) that the provisions of the Constitution and various social welfare laws passed for the benefit of the said workmen were not being implemented in regard to these labourers. The petitioner also mentioned in the letter the names of the stone quarries and particulars of labourers who were working as bonded labourers and prayed that a writ be issued for proper implementation of the various provisions of the social welfare legislations such as Mines Act 1952, Inter-State Migrant Workmen (Regulations of Employment and Conditions of Service) Act, 1979, Contract Labour (Regulation and Abolition) Act, 1970, Bonded Labour System (Abolition) Act, 1976, Minimum Wages Act Workmen's Compensation Act,

240 Bandhua Mukti Morcha vs. Union of India and Ors, AIR 1984 SCR (2) 67 P. 802
Payment of Wages Act, Employees State insurance Act, Maternity Benefits Act, etc. applicable to these labourers working in the said stone quarries with a view to ending the misery suffering and helplessness of ‘these victims of the most inhuman exploitation’.

The court treated the letter as a writ petition and appointed a commission to inquire into the allegations made by the petitioner. The commission while confirming allegations of the petitioner pointed out in its report that (i) the whole atmosphere in the alleged stone quarries was full of dust and it was difficult for anyone to breathe (ii) some of the workmen were not allowed to leave the stone quarries and were providing forced labour (iii) there was no facility of providing pure water to drink and the labourers were compelled to drink dirty water from a nullah (iv) the labourers were not having proper shelter but were living in jhuggies with stones piled one upon the other as walls and straw covering the top which was too low to stand and which did not afford any protection against sun and rain (v) some of the labourers were suffering from chronic diseases (vi) no compensation was being paid to labourers who were injured due to accidents arising in the course of employment (vii) there were no facilities for medical treatment or schooling. At the direction of the Court a socio-legal investigation was also carried out and it suggested measures for improving the conditions of the mine workers.

The respondents contended: (1) Article 32 of the constitution is not attracted to the instant case as no fundamental right of the petitioner or of workmen referred to in the petition is infringed (2) A letter addressed by a party to this Court cannot be treated as a writ petition; (3) in a proceeding under Act. 32 this Court is not empowered to appoint any commission or an investigating body to enquire into the allegations made in the writ petition (4) Reports made by such commissions are based only on ex-parte statements which have not been tested by cross-examination and therefore they have no evidentiary value; and (5) there might be forced labourers in the stone quarries and stone crushers in the State of Haryana but they were not bonded labourers within the meaning of that expression as used in the Bonded Labour System (abolition) Act, 1976.
The Supreme Court rejecting all the contentions and allowing the writ petition on merits, the Court held that the State Government's objection as to the maintainability of the writ petition under article 32 of the Constitution by the petitioners is reprehensible. If any citizen brings before the court a complaint that a large number of peasants or workers are bonded serfs or are being subjected to exploitation by a few mine lessees or contractors or employers or are being denied the benefits of Social welfare laws, the State Government, which is, under our Constitutional scheme, charged with the mission of bringing about a new socioeconomic order where there will be social and economic justice for every one equality of status and opportunity for all, would welcome an inquiry by the court, so that if it is found that there in fact bonded labourers or even if the workers are not bonded in the strict sense of the term as defined in the bonded Labour System (abolition )Act 1976, but they are made to provide forced labour or are consigned to a life of utter deprivation and degradation, such a situation can be set right by the State Government. Even if the State Government is on its own inquiry satisfied that the workmen are not bonded and are not compelled to provide forced labour and are living and working in decent conditions with all the basic necessities of life provided to them, the state government should not baulk an inquiry by the court when a complaint is brought by a citizen, but it should be anxious to satisfy the court and through the court, the people of the country, that it is discharging its constitutional obligation fairly and adequately and the workmen are being ensured social and economic justice.241

(ix) Neeraja Chaudhury vs. State of Madhya Pradesh 242

In this case Hon'ble justice P.N. Bhagwati held that under the Bonded Labour System (Abolition) Act, 1976 it is not enough merely to identify and release bonded labourers but it is more important that they must be rehabilitated because without rehabilitation they would be driven to poverty, helplessness and despair thus into serfdom once again. This is the plainest requirement of Article21 that the bonded labourers must be identified and released and suitably rehabilitated. The Act has been enacted pursuant to the Directive Principles of State Policy with a view to ensure basic human dignity to the bonded labourers and any failure of action on the part of the State in

241 http: www.judis.nic.in
242 AIR 1984 SC 1099.
implementing the provisions of this legislation would be the clearest violation of Article 21 of the Constitution. This case is not directly related to migrant workmen law but concerns the Bonded Labour Abolition Act, 1976. However, the trinity of bonded labour, Migrant Labour and contract labour concerns the weaker segment of the society; contract and inter-state migrant workmen will be treated as bonded labour.

(x) Nagender Dutt Juari vs. State of Uttar Pradesh

The Supreme Court had directed the District Judge of Tehri Garhwal to investigate the allegation made in a Public Interest writ petition, by two lawyers from Uttar Kashi. In his report the District Judge has indicted at least two Government of UP and the Labour Inspector of the Government of UP and the General Manager of the National Project Construction Corporation, a Public sector company. The District Judge has recorded that both of them lied to him about the true state of affairs and tried to convince him that there was no migrant labour, that there was no violation of any labour laws. The Sub-divisional Magistrate of Uttar Kashi is also mentioned. He told the District Judge that he had visited NPCC and the conditions of labours had improved. But on visiting the site the District judge found many labourers from Orissa and Bihar, including some women and some children’s are below 14 years of age. The contractors had no licenses under the Interstate Migrant Workmen (Regulation of Employment & Conditions of Service) Act, 1979, they were grossly underpaid and in violation of every possible law they were being kept in a hell-hole. Most of them had borrowed a few hundred rupees from the contractor and were working off a debt that would- as might be expected- never work itself out. In this situation labourers are fortunate that their case come before the Supreme Court and the Court has wide powers to interpret the labour issue. Generally the labour related decided in the lower Courts in the light of the Supreme Court directives in a judgment that lays down the law. The Courts of the Judicial Magistrates First Class are the courts of original jurisdiction for these cases which fall under the labour law. These officers cannot be expected to make major innovations in interpreting the law. But they can follow it when it is expounded by superior Courts.

243 WP, No. 1608 of 1984, under Article 32 of the Constitution of India
(xi) Olga Tellis vs. Bombay Municipal Corporation\textsuperscript{244}

This case is popularly known as pavement dwellers case. In this case Hon’ble Supreme Court has ruled that the word ‘life’ in Art. 21 includes right to livelihood also. The Court further held that if right to livelihood is not treated as a part of the Constitutional right to life, the easiest ways of depriving a person of his right to life would be to deprive him of his means of livelihood. In view of the fact that Articles 39(a) and 41 require the State to secure to the citizen an adequate means of livelihood and the right to work, it would be sheer pendentary to exclude the right to livelihood from the content of the right to life.

(xii) Dhirendra Chamoli vs. State of Uttar Pradesh\textsuperscript{245}

In this case the Hon’ble Supreme Court has held that the casual workers employed on daily wage basis are entitled to get equal pay as they have done the work equally with that of regular workers. It is not relevance for the application of “equal pay for equal work” principle that, the workers must be appointed in the sanctioned post. Even if the casual workers appointed in the posts not sanctioned, are entitled for equal pay for equal work. The government cannot take the benefit of that, casual unorganized workers accepted the employment with the knowledge that they would get the daily wage and a welfare state like India assuring socialist, democratic republic cannot be allowed to take such a plea before the Court of law.

(xiii) Centre of Legal research vs. State of Kerala\textsuperscript{246}

In this case the Hon’ble Supreme Court held that in order to achieve the objectives in Article 39-A, the State must encourage and support the participation of voluntary organizations or social action groups in operating the legal aid programme. The legal aid programme which is meant to bring social justice to the people cannot remain confined to the traditional or litigation oriented programme but it must take into account the socio-economic conditions prevailing in the country and adopt a more dynamic approach. The voluntary organizations must be involved and supported

\textsuperscript{244} AIR 1986 SC 180  
\textsuperscript{245} (1986)1 SCC 637  
\textsuperscript{246} AIR 1986 SC 1322
for implementing legal aid programme and they should be free from Government control.

(xiv) Damodar Panda and Others vs. State of Orissa and Others

In this case the Supreme Court held that, the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 is a beneficial legislation for satisfying the provisions of the Constitution and the obligation in international agreements to which India is a party. There is no valid justification for not permitting the officers of the Originating State to hold appropriate enquiries in the Recipient State in regard to persons of the Originating State Working as migrant labour in the Recipient State. To implement the provisions of the Act every State and Union Territory in India would be obliged to permit officers of originating States of migrant labour for holding appropriate inquiries within the limits of the Recipient States for enforcement of the statute and no Recipient State shall place any embargo or hindrance in such process. The Court delivered the following Order:

One of the matters which arise for consideration in this Writ Petition is as to how the provisions of the inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, and particularly of section 20 thereof can be enforced. In the affidavit filed by the Union of India in the Ministry of labour it has been stated that in view of the scheme contained in section 20(3) of the Act that officer of the Originating State can make enquiries within the Recipient State provided the Recipient State agrees to such Officers of the Originating State operating within that State, the law has not become workable in a proper way. This is a beneficial legislation for satisfying the provisions of the Constitution and the obligation in international agreements to which India is a party. We do not think there can be any valid justification for not permitting the officers of the Originating State to hold appropriate enquiries in the Recipient State in regard to persons of the Originating State working as migrant labour in the Recipient State. We do not think that there is any necessity to hear the other States before making an order for enforcing section 20(3) and to give effect to the legislative intention contained therein. Mr. Panda appearing for the State of Orissa has agreed that Orissa State has

247 AIR 1990 SC 1901
no objection to officers of any originating State holding necessary enquiries within Orissa when it is a Recipient State.

The Court has therefore, make a direction that to implement the provisions of the Act of 1979 referred to above every State and Union Territory in India would be obliged to permit Officers of originating States of migrant labour for holding appropriate inquiries within the limits of the Recipient States for enforcement of the statute and no Recipient State shall place any embargo or hindrance in such process. Copy of this order shall be sent to the Chief Secretary of every State and Union Territory for compliance.

The Court has also cognizant of the fact that this order has been made without hearing the States other than Orissa and the Union Territories. In the event of any State or Union Territory is of the opinion that the direction should be modified, liberty is given to apply for modification of the order but until it is modified it shall remain in force. The Writ Petitions are disposed of with this order.

(xv) D.K. Yadav vs. JMA Industries\textsuperscript{248}

This case has some linked with migrant workers problem relating to termination of the service. In this case the Supreme Court has held that termination of service of a worker without giving reasonable opportunity of hearing is unjust, arbitrary and illegal. The Court held that right to life enshrined in Article 21 of the Constitution includes the right to livelihood and an order of termination of service of an employee visits with civil consequences of depriving of his livelihood and, therefore, fair play requires that before taking such an action a reasonable opportunity must be given to him to explain his case. The procedure prescribed for depriving a person of livelihood must meet the challenge of Article 14 and so it must be right, just and fair and not arbitrary, fanciful or oppressive.
In M.C. Mehta case the Hon'ble Supreme Court has held that the children below the age of 14 years cannot be employed in any hazardous industry, mines or other works and laid down exhaustive guidelines how the State authorities should protect economic, social, humanitarian rights of the millions of children, working illegally in public and private sections. The matter was brought before the Court by a public spirited lawyer Mr. M.C. Mehta by way of public interest litigation under Article 32 of the Constitution. He told to the Court about the plight of children engaged in the Sivakasi Cracker Factories. Though the Constitution provides in Article 24 that the children should not be subjected to exploitation and the law prohibits employment of child labour and it casts a duty on State to endeavour to provide free and compulsory education to them. Despite the Constitutional provisions and various legislative enactments passed by many States which prohibits employment of child labour and it denotes as big problem has remained unsolved. The Court directed setting up of Child Labour Rehabilitation Welfare Fund and asked the offending employer to pay for each child a compensation of Rs. 20,000 to be deposited in the Fund and suggested a number of measures to rehabilitate them in the phased manner. The Court also made it clear that the liability of the employer would not cease if he would desire to disengage the child presently employed and asked the government to ensure that an adult members of the child’s family get a job in a factory or anywhere in lieu of the child. So it becomes the regular occurrence that the children of the migrant workers engaged in the hazardous industry. In the working place they have not provide with any safety and security. In this regard the decision of this case is very useful to protect the rights of the children engaged in hazardous factory.

This case is relating to sexual harassment of women in working places and also relevant to the migrant women workers. Here in deciding the case the Supreme Court has laid down exhaustive guidelines for preventing sexual harassment of working women in place of their work unit until a suitable legislation is enacted for this purpose. The Court has held that it is the duty of the employer or other responsible

(xvi) M.C. Mehta vs. State of Tamilnadu

(xvii) Vishaka vs. State of Rajasthan

249 AIR 1997 SC 699
250 AIR 1997 SC 3011
person in work place and other institutions, whether public or private, to prevent sexual harassment of working women. The Court directed the employers to set up procedure through which working women can make their complaints heard.

(xviii) Air India Statutory Corporation vs. United Labour Union

Here in this case the Court explains about the concept of social justice under Article 38 of the Indian Constitution and very much relevant to the context of the migrant workers. The concept of 'social justice' consists of diverse principles essential for the orderly growth and development of personality of every citizen. 'Social justice' is then an integral part of justice in the generic sense. Justice is genus, of which social justice is one of its species. Social justice is a dynamic devise to mitigate the sufferings of the poor, weak, dalits tribal's and deprived sections of the society and to elevate them to the level of equality to live a life with dignity of person. Social justice is not a simple or single idea of a society but is an essential part of complex social change to relieve the poor from handicaps, penury, to ward off distress and to make their life livable, for greater good of society at large. The aim of social justice is to attain substantial degree of social, economic and political equality which is the legitimate expectation and Constitutional goal. In developing countries like ours, where there is vast gap of inequality in status and opportunity, law is a catalyst, rubicund to the poor etc. to reach the ladder of social justice. The Constitution, therefore, mandates the State to accord justice to all members of the society in all facet of human activity. The concept of social justice enables equality to flavor and enliven the practical content of life. Social justice and equality are complementary to each other so that both should maintain their validity. Rule of law, therefore, is a potent instrument of social justice to bring about equality.

(xix) Mahabubnagar District Palamoori Contract Labour Union Case

The brief fact of the case is that letter by the President of the petitioner labour union detailing the alleged misfortune of 200 labourers employed by the respondents was treated as public interest litigation. In the letter it was specifically alleged that these

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251 AIR 1997 SC645
workers work around 12 hours a day, that they are paid only Rs. 300/- a month after adjusting the advance paid and they are bonded labourers as defined in the Bonded Labour Act. The respondent in its affidavit replied that the workers were all free persons and that most of them had left for their native places.

On the basis of the evidence and reports produced by the petitioners, the Court observed that 'even the minimum facilities needed for decent human existence is denied to them for the sin of themselves offering as workers. These workers are crowded in a shed like cattle. The shed has no flooring. There is no tidy place to sleep or sit. There is no neat place to cook food. There is no drinking water facilities provided. There are no latrines and urinals. The shed has zinc roofing. The heat, it would radiate in the day and night would be unbearable.' The Court observed that these workers received advance and work thereafter setting off the wages towards the advance, and thus there was a case of labourers being detained in the work spot against their wishes and to realize the advance paid to them.

The Court also condemned the inaction of the District Magistrate, and observed that much more desirable action was to be taken by him. The Court observed that 'he (the District Magistrate) cannot explain away his inaction stating that the file relating to the same was lost in the Tahsildar's Office. Bonded labour is a very serious matter. It is a disgrace to the society we are living in. It is inhuman. By the practice, scores of lesser privileged men and women are denied everything for the mere reason that they were born poor.'

The Court ordered that it is necessary that States take effective measures to see that the employers conform to the requirement of law. For that purpose, the State was to issue directives to the Heads of the Districts to 'ensure labour legislations are scrupulously implemented.' Further, the Court order that the following measures be taken by the Commissioner of Labour-

1. Adequate and frequent inspections should be made of work site by the Competent Authorities;
2. The District Administration in collaboration with the Labour Department should be directed to frequently monitor the performance of work by various establishments who have taken registration/permission/licence under various
labour legislations and see whether there is compliance of the requirement of law;
3. At least a fortnightly thorough inspection by the Officials of the Labour Department of the above premised should be carried out;
4. The Commissioner of Labour and the District Administration with mutual understanding should oversee these inspections;
5. There should be surprise inspection by authorities of work-sites, project areas, etc., as directed by the Senior Officials of the Labour Department;
6. It is not sufficient that periodic perusal of muster rolls are carried out by these officials;
7. They should also interact with the workers whenever feasible and ascertain whether they have any grievances;
8. The authorities should check whether the minimum wages are paid to all the workers and if not ensure that it is so paid;
9. The District Administration should also ensure that Medical Officers of the State or that of the E.S.I. Corporation makes routine examination of the labourers at work site.

The Court held that serious injustice and hardship has been caused to the poor workers. Had the 3rd respondent (the District Magistrate) been more alert, their grievances could have been, to some extent, abated. Instead of realizing the real situation and acting in accordance with law, the respondents have made it appear that the allegation made by the petitioner is false and he be mulcted with exemplary cost. This conduct is certainly unjustified. The petitioner was held to have proved his case and was entitled to costs from all five respondents fixed at Rs. 2600.253

(xx) Dhanurjaya Putel and Another vs. State of Orissa254

In this case both the petitioners are the accused persons in G. R. Case No. 94 of 1998 of the Court of Judicial Magistrate First Class, Kantabanji. In that case learned Magistrate took cognizance of the offence under Section 367 of Indian Penal Code read with Section 25 of the Inter-State Migrant Workmen (Regulation of Employment and Condition of Services) Act, 1979. Petitioners moved an application in the Court

253 http://cec-india.org/libpdf
254 Dhanurjaya Putel & Another vs. State of Orissa, 2002 II OLR 412
below to recall that order of cognizance on the ground of absence of prima, facie case. That application having been rejected by learned Judicial Magistrate First Class as per the impugned order dated 21.3.2001 petitioners has moved this application under Section 482, Cr.P.C.

Interpreting the said provision while learned counsel for the petitioners argues that by making payment of advance money to the, labourers, i.e. the victims and taking them to another State for employment and realizing the advance money from such amount earned through such labourers does not qualify to the term abduction, i.e., employment by adopting deceitful means with inducement and therefore, the offence under Section 367 of Indian Penal Code is not made out. Learned Standing Counsel, on the other hand, states that the victims being penniless persons, taking advantage of that situation petitioners made payment of good amount of Rs. 4,500/- or such sum to each of the victims with an inducement to go outside the State and to work by making 1500 bricks per day on payment of Rs. 30/- till the date of repayment of the advance amount and thereafter @ Rs. 30/- for making 1000 bricks per day makes it clear that the ingredients of inducement with the purpose of abduction for slavery is clearly made out and petitioners should not get rid of the trial of such offence on the pretext that such conduct of the petitioners may be inhuman or cruel or torturous but does not amount to utilizing the victims as slaves.

The case is deal with the issue of kidnapping and abduction for the purpose of engaged the worker as slave to the workplace. On a careful consideration of the aforesaid argument and analysis of the provision in Section 362 of Indian Penal Code the Court finds that provision of law relating to abduction is made out if it is proved on record that there was inducement in one form or other to go from any place and in that respect a deceitful means is applied, i.e., the mode of compulsion with deceitful means. 'Deceit' means cheating or misleading and one of the ingredients of cheating, as in Section 415 of Indian Penal Code is intentionally inducing a person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.
Therefore, when prosecution allegation is to the effect that the victims were induced to leave for another State and asked to prepare 1500 bricks per day on a fixed payment of Rs. 30/- till adjustment of the advance amount paid to them by the petitioners and thereafter to prepare 1000 bricks per day by taking a labour charge of Rs. 30/- a factual finding has to be recorded what is the amount of labour required for a person to prepare 1000 bricks or 1500 bricks per day and what could have been the proper or adequate wage for that amount of labour. On the face of the allegation it appears that it may not be humanly possible, for a single person to prepare 1000 bricks or 1500 bricks by devoting a legitimate eight working hours a day for which, according to the Minimum Wages Act he has to receive a payment of not less than Rs. 50/-. This observation is on the basis of common experience and it is subject to variation according to the evidence of the witnesses.

The aforesaid inference is plausible and therefore it is made for the sake of discussion only to show that it is not a case of absence of deception, as argued by the petitioners. Exploitations in certain form, as in the present case, may also amount to deception and therefore, for the purpose of prima facie appreciation of the prosecution case the term 'deceitful means' has been made. In other words, as per the above noted allegation when the inducement is made by making payment of money in advance to a needy person and exploiting him in the aforesaid manner with the thrust of compulsion to leave his home and to go outside the State in the alleged manner for making bricks, this Court finds that a prima facie case for abduction, as defined in Section 362 of Indian Penal Code is made out. After long hearing of the case the petitioner's application under Section 482 Cr.P.C dismissed by the Court. Send a copy of this order along with the LCR to the Court below.  

(xx) Mantoo Sarkar vs. Oriental Insurance Company Ltd

In this case the appellant was working as a skilled migrant seasonal agricultural labourer. He had been earning his livelihood at the relevant time by performing his job as a labourer in the work of extracting sand gravel from a river named ‘Hola River’ near Beri Pada, Lalkuan district Nainital, Uttaranchal. He is said to have been living for a long time at Pilibhit in the State of Uttar Pradesh. The appellant had been

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255 https://indiankanoon.org/doc/1338300/
256 2009 (2) SCC 244
traveling as a passenger in a bus belonging to Madhya Pradesh Road Transport Corporation. It met with an accident in the town of Faridpur in the district of Uttar Pradesh having collided with truck. Appellant suffered grievous injuries. A First Information Report was lodged against the driver of the said truck under Sections 279, 338, and 427 of the Indian Penal Code.

Indisputably the said truck belonged to respondent No.2 and was registered at Faridabad. It was insured with respondent No.1-company. Appellant was working as a skilled migrant seasonal agricultural labourer. He had been earning his livelihood at the relevant time by performing his job as a labourer in the work of extracting sand gravel from a river named ‘Hola River’ near Beri Pada, Lalkuan District Nainital, Uttaranchal. He is said to have been living for a long time at Pilibhit in the State of Uttar Pradesh. Indisputably, after he remained in the district Hospital at Bareilly as an indoor patient up to 28th July, 2003, he was shifted to Prabhakar Hospital in Pilibhit. He underwent several operations. Appellant filed a claim petition before the Motor Accident Claims Tribunal, Nainital (for short ‘the Tribunal’) claiming a sum of Rs.23, 90,000/- (Rupees twenty three lakh ninety thousand only) along with interest @ 18% per annum from the date of the accident till the date of actual payment.

Respondent (No.1) has a branch office at Nainital. The conductor of the bus and the driver of the truck examined themselves before the Tribunal as witnesses. No oral evidence was, however, adduced on behalf of the first respondent. One of the questions which, only the first respondent raised and no other was lack of territorial jurisdiction on the part of the Tribunal. The learned Tribunal inter alia on the premise that the jurisdiction conferred on it, having regard to Section 166 (2) of the Motor Vehicles Act is wide and the insurance company having a branch office at Nainital, it had territorial jurisdiction to determine the claim petition. It made an Award of Rs.2, 40,000/- (Rupees two lakh forty thousand only) in favour of the claimant.

The High Court, however, on an appeal preferred thereagaisnt by the first respondent, opined -

‘It is a well settled position of law that the claim petition can only be entertained and filed before a court having the territorial jurisdiction to hear the matter. The claimant cannot take the matter to different State on the pretext that his case would be disposed
of expeditiously in that State or District without having the territorial jurisdiction. The learned counsel for the claimants submitted that in case the Court comes to the conclusion that the Tribunal, Nainital had got no territorial jurisdiction to dispose of the matter, the claimants may be given liberty to file a fresh claim petition before the competent Tribunal.

On the basis of the said finding it was held that Motor Accident Claims Tribunal, Nainital had no territorial jurisdiction to entertain the said claim petition. Mr. Shailendra Singh, learned counsel appearing on behalf of the appellant would contend that the High Court committed a serious error in passing the impugned judgment insofar as it failed to take into consideration. The evidence of the appellant (PW 1) wherein he clearly stated that he had working at Beri Pada, Lalkuan in the district of Nainital, although he had not given his Lalkuan address in his claim petition having been doing his work as a labourer. The evidence of the said witness having been accepted by the learned Tribunal, the High Court should not have interfered therewith. In this view of the matter, the Hon’ble Court opined that it is not a fit case where this Court should exercise its discretionary jurisdiction under Article 136 of the Constitution of India. In deciding the case the Supreme Court cites reference of Brij Mohan case and held that:

However, Appellant is a poor Migrant labourer. He had suffered grievous injuries. He had become disabled to a great extent. The amount of compensation awarded in his favour appears to be on a lower side. In the aforementioned situation, although we reject the other contentions of Ms. Indu Malhotra, we are inclined to exercise our extraordinary jurisdiction under Article 142 of the Constitution of India so as to direct that the award may be satisfied by the appellant but it would be entitled to realize the same from the owner of the tractor and the trolley wherefore it would not be necessary for it to initiate any separate proceedings for recovery of the amount as provided for under the Motor Vehicles Act. It is well settled that in a situation of this nature this Court in exercise of its jurisdiction under Article 142 of the Constitution of

257 https://indiankanoon.org/doc/325576/
India read with Article 136 thereof can issue suit directions for doing complete justice to the parties.

For the reasons aforementioned, the impugned judgment cannot be sustained. It is aside accordingly and the order of the Tribunal is restored. The appeal is allowed with cost.

(xxii) Rajan Kudumbathil vs. Union of India 259

In this case the problems faced by migrant labourers in the state of Kerala were highlighted. This case came before the Hon’ble High Court of Kerala for the following directions To take an assessment of the migrant labourers in various parts of the state and to prepare a comprehensive scheme for making rehabilitation and welfare of such labourers and their family members in accordance with inter-state migrant workmen (Regulation of Employment and conditions of service) Act, 1979 and the rules made there under:

- To implement the provisions contained in Inter-State migrant workmen (Regulation of Employment and conditions of service) Act, 1979 and the Rules. The Hon’ble High court of Kerala disposed the case with the following directions.

- Ensure that a proper study or assessment is made as regards the migrant labourers who are working in various parts of the Kerala.

- A methodology shall be evolved to get migrant workers registered at the Panchayat/ Corporation/ District level to issue photo Identify cards, making it mandatory for employers to report about such migrant workers to the competent authority, if these workers are engaged by them. A comprehensive programme for providing the migrant workers basic amenities can be considered by the Government under a scheme which can be drawn up for the purpose in tune with provisions contained in the 1979 Act.

259 WP(c). No. 15393 of 2009(s) High Court of Kerala at Ernakulum
The case is related to trafficking of children to use as forced labour to circus job. The brief fact of the case was that Bachpan Bachao Andolan, an Indian-based movement, filed a public interest petition under Article 32 of the Constitution concerning the serious violations and abuse of children who are forcefully detained in circuses. The children are trafficked from impoverished parts of Nepal and India and forced to stay and perform in circuses where they are frequently sexually, physically and emotionally abused and kept in inhuman conditions. There are no labour or welfare laws which protect the rights of these children, and state agencies have failed to deal with the issue of child trafficking. The petition requested that the Court issue a number of orders or directions against the state, including: to frame appropriate guidelines for persons engaged in circuses; to conduct raids on circuses to liberate the children and examine the gross violations of their rights; to appoint special forces on the borders to prevent cross-border trafficking of children; to criminalize intra-state trafficking, bondage, forcible confinement, sexual harassment, and abuse of children; to empower the Child Welfare Committee under the Juvenile Justice (Care and Protection of Children) Act, 2000 to award compensation to child victims rescued from the circuses; and to prohibit the employment or engagement of children under 18 in circuses. Again the issue were raised in the case that ongoing large scale rural urban migration creates an enormous variety and number of problems related to social dislocation, severe lack of shelter and rampant poverty, most of which are not addressed at all.

In this case the Court observed that children are entitled to special protection under the Constitution, as well as protection under the Juvenile Justice (Care and Protection of Children) Act and international treaties and conventions related to human rights and child rights, including the Convention on the Rights of the Child, to which India is a signatory. However, there are perpetual violations of the law with respect to children who are trafficked into circuses. The Court found that, from the comprehensive submissions made by the learned Solicitor General, it is clear that the

\[\text{AIR 2011 SC 3361}\]
Government of India is fully aware about the problems of children working in circuses and elsewhere.261

(xxiv) National Campaign Committee Case262

This case is connected with the implementation certain sections of Building and Other Construction Workers (Regulation of the Employment and Conditions of Service) Act, 1996 and Building and Other Construction Workers Welfare Cess Act, 1996. In a landmark judgment in this case the Hon’ble Supreme court came down heavily on the Central Government and all the State Governments for not implementing the provisions of the above Acts. It directed the states to implement the following measures without delay.

• The Welfare Boards have to be constituted by each State with adequate full-time staff within three months

• The welfare Boards will have to meet at least once in two months or as specified in the rules, to discharge their statutory functions.

• Awareness should be built up, about the registration of building workers and about the benefits available under the Act. There should be effective use of media, All India Radio and Doordarshan, for awareness programmes regarding the Act, the benefits available there under and procedures for availing the benefits.

• Each State Government shall appoint registering officers and set up centers in each district to receive and register the applications and issue receipts for the applications.

• Registered trade unions, legal services authorities and NGOs are to be encouraged to assist the workers to submit applications for registration and for seeking benefits.

• All contracts with the Governments shall require registration of workers under the Act and extension of benefits to such workers under the Act.

• Steps to be taken to collect the Cess under the Cess Act continuously and the benefits under the Act have to be extended to the registered workers within a stipulated time-frame, preferably within six months.

• The Member-Secretary of the Welfare Boards and the Labour Secretary shall be responsible for due implementation of the provisions of the Act. The Labour Ministry of each State shall carry out special drives to implement the provisions of the Act.

• The Comptroller and Auditor General should audit the entire implementation of the Act and use of the funds.

• All the Boards shall submit a comprehensive report as required under the Act and the Rules to the respective Government.

(xxv) Public Union Civil Liberties vs. State of Tamil Nadu and Other 263

In this case a PIL is filed before the SC by PUCL to establish the fact of miserable conditions of the bonded labourers in our country and their exploitation. It is the prime necessity of identifying and checking the practice of bonded labour in this country and to rehabilitate those who are victim of this practice.

While dealing with this case the Hon’ble Supreme Court interpret the various provisions of Bonded Labours Act, Inter- State Migrant Workmen Act and passed an interim order and gave various directions which are as under:

(1) To identify the bonded labourers and update the existing list of such bonded labourers as well as to identify the villages where this practice is prevalent.

(2) To identify the employers, exploiting the bonded labourers and to initiate appropriate criminal proceedings against such employers.

263 Writ Petition (Civil) No. 3922 of 1985 and decided on 15th October, 2012
(3) To extinguish/discharge any existing debt and or bonded liability and to ensure them an alternative means of livelihood.

(4) To appoint an independent body such as a local non-political social action group to collect independent information and details of-

(a) the prevalence of the exploitative practice of bonded labour and

(b) employers or their agents perpetrating the willful violation of the law by encouraging and abetting the practice of bonded labour.

(5) To provide employment to such bonded labourers as agricultural workers at the prescribed minimum wage rate and/or provide the landless bonded labourers with agricultural land, with a view to ensure an alternative means of livelihood.

(6) To provide adequate shelter, food, education to the children of the bonded labourers and medical facilities to the bonded labourers and their families as part of a rehabilitation package.

(7) To ensure-

(a) regular inspection by the Labour Commissioner concerned to keep the contractors who have in the past employed bonded labourers under watch,

(b) setting up of Vigilance Committees in each district,

(c) the District Magistrates concerned to send quarterly reports to the Supreme Court Legal Aid Committee or to any Commissioner appointed by the court for this purpose,

(d) the setting up of rural credit facilities such as grameen banks, cooperatives etc. from which short-term interest free loans can be availed without security, since the root cause of bonded labour seems to be the lack of availability of funds (credit through an institutional network).

(8) To initiate criminal prosecution against the contractors/employers or their agents who engage bonded labour and employ children below the age of 14 without adequate
monetary compensation by paying wages below the minimum wage rate, as prescribed under the Minimum Wages Act.

(9) To initiate criminal prosecution against those employers, contractors or their agents who make part payment of wages by way of Khesri dal this is known to cause permanent disability -lathyrites.  

(xvi) Builders and Contractors v. Union of India & Ors

In this case the Hon’ble Supreme Court observed that, illiteracy of the workers coupled with unscrupulousness of the employers is the most important factor contributing to the ignorance of the workers about the minimum rates of wages fixed by the Government. This ignorance in turn induces them to accept whatever wages are paid. It is, therefore, necessary that the Government (Central as well as State) devises and adopts a policy to give wide publicity to the minimum rates of wages through print and electronic media at regular intervals and also through other means. Government should therefore, make it mandatory to out rightly reject tenders quoting prices where the component of wages and other allied benefits based on wages such as provident fund, Employees State Insurance, bonus, gratuity, etc. are calculated at less than the minimum rates of wages. The mobility of workers from one project/site to another has fast increased. The workers who were seen at one place a few days back are not noticed there today. It becomes difficult to trace them once they have left the site. Unfortunately, no registers or records maintainable by the employer under the Minimum Wages Act, 1948 or the rules framed hereunder require the local and or permanent addresses of the workers to be recorded thereby making it difficult at times for any amount to be remitted to them in compliance with the order of the appropriate authority.

(xvii) National Insurance Co. Ltd. vs. Manappa Badigari and Ors

It is well known that unorganized labour in this country are mostly migrant labourer and even skilled labourer migrate from place to place, most of them would not have

264 https://indiankanoon.org/doc/182418340/
265 (2012) 1 SCC 101
regular work or employment; that the accident having taken place in the year 2011, even the minimum wages that the State Government and Central Government should pay to daily wage workers is in the range of Rs.150/per day and in such circumstances, attributing the income of Rs.5,000/to a worker like a carpenter is a conservative estimate of income and not any liberal or higher estimate of average income of the deceased who had the potential for higher earning in life, being just of the age of 18 to 19 years at the time of death. In a situation of this nature, in fact, it is only the claimants who, perhaps, could have filed an appeal for enhancement and definitely not by the insurance company and therefore the appeal is dismissed, levying costs of Rs.5,000/on the appellant insurance company to be payable to the claimants. Cost to be paid along with the amount awarded before the Tribunal within four weeks.

(xxviii) Sageer & Others vs. State Of U.P. & Others 267

The case was deals with freedom of bondage labour. The workers migrated to one place to another places and engaged in the un-organized sectors and works for long periods. The fact is that the entire family of the workers migrated to distant places to work in brick fields or in quarry sites, or in other occupations as unorganized labour with no proper residence or drinking water facilities, and poor protection from the vagaries of weather, absence of medical care and denial of schooling to little children, only due to landlessness, hunger and acute poverty in their home areas. Rightly these migrations have been described to be in the nature of distress migrations. They have no freedom in the work places. In this case the Hon’ble High Court of Allahabad has held that, poverty and destitution are almost perennial features of Indian rural life for large numbers of unfortunate ill-starred humans in this country and it would be nothing short of cruelty and heartlessness to identify and release bonded labourers merely to throw them at the mercy of the existing social and economic system which denies to them even the basic necessities of life such as food, shelter and clothing. It is obvious that poverty is a curse inflicted on large masses of people by our malfunctioning socio-economic structure and it has the disastrous effect of corroding the soul and sapping the moral fiber of a human being by robbing him of all basic human dignity and destroying in him the higher values and the finer susceptibilities which go to make up this wonderful creation of God upon earth, namely, man. It does

267 W.P. No. 70403 of 2011, Order Dated: 5.01.2012
not mean mere inability to buy the basic necessities of life but it goes much deeper, it deprives a man of all opportunities of education and advancement and increases a thousand fold his vulnerability to misfortunes which come to him all too often and which he is not able to withstand on account of lack of social and material resources.

The Hon’ble High Court further cast the duty on Districts Magistrates not only to rehabilitate bonded labourers after they have been identified and released, so that they are prevented from again lapsing into bondage, but he must give preventive relief to vulnerable classes of people, such as landless agricultural labourers or share croppers facing droughts, or bonded child labour in the sericulture processing, carpet-weaving industry or match and fire crackers industries or distress migrant labourers working in stone quarries, or brick-kilns or beedi manufacturing, or construction projects, or as gatherers of forest produce or in pisciculture etc. under contractors who advance bonded debts for exacting bonded labour. The Court also held that in cases of migrant bonded labourer they may be from the same district or another district in the state, or may be from another state. As after the bonded labour issue is raised usually the labourer voluntarily or forcibly goes back to his original home, and consequently no complainant is left to prosecute the complaint, (as in the present case). Hence, whenever the complaining bonded labour belongs to the same district or another district in U.P., the matter may also be referred for examination to the State Human Rights Commission and whenever the aggrieved bonded labour originates from a district outside U.P., the matter may be referred for examination to the National Human Rights Commission. The said Commissions may take cognizance on the reference if they deem appropriate and issue directions or submit their report.

(xxix) Tamil Nadu Construction and Others vs. Union of India

In this case Tamil Nadu Construction and Unorganized workers Federation filled a Writ Petition before the Madras High Court alleging that the migrant workers engaged in the construction sites in this State are not availed the statutory benefit. The learned counsel appearing for the petitioner submitted that though there are various labour enactments, they have not been implemented qua the migrant workmen. Unfortunately, such workmen have not been registered with the fifth respondent. A

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further submission has been made that the migrant workers, though entitled to in law are not given such benefits under the Inter-state Migrant workmen (Regulation of Employment and Conditions of Service) Act, 1979 and Contract Labour (Regulation and Abolition) Act, 1970, which were enforced by Commissioner of Labour. In this regard the Court ordered that the respondent construction companies need to be seriously taken the issue of social welfare and protection of the rights of the migrant workers, those who are engaged in the construction sectors.

The researcher has taken hypothesis on ‘existing government policies and schemes are not adequate to provide better conditions to migrant workers to reach the ambit of human rights’ for establishing as prove within the discussed chapter. In many times Judiciary has pronounced in its valuable judgment but in same time the migrant workers are exploited by their employer. Therefore, Judiciary has directed to Governments for the formation of several welfare schemes and programmes.

Apart from the efforts taken by our Judiciary to protect the rights of the migrant workers, the government both at the central and as well as state levels are issuing various plans, policies and programmes to reducing labour migration. Migrant workers are belongs to the vulnerable groups in our society. Their rights are violated in day by day in place of origin and as well as in destination places. It is already established that only legislature and judiciary are not able to eradicate the issues without proper implementation of plan policies and programmes in the society. Time and again issues are being raised towards the Government for gradual increase of labour migration. Therefore, the Government should initiate need based policies and programmes to mitigate the problems.