Strategies and Tools for Organising Migrant Workers

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In Association with

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Society for Rural Urban & Tribal Initiative

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First Published, 2010

ISBN 978-93-5002-102-6

Published by
AAKAR BOOKS
28 E Pocket IV, Mayur Vihar Phase I, Delhi 110 091
Phone : 011 2279 5505 Telefax : 011 2279 5641
aakarbooks@gmail.com; www.aakarbooks.com

In association with
SRUTI
Q-1, Hauz Khas Enclave, New Delhi 110 016
Web : www.sruti.org.in
E-mail : sruti@vsnl.com

Printed at
Mudrak, 30 A Patparganj, Delhi 110 091

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Introduction

For the working class in large parts of rural India, migration is often the only option for survival. Crores of people migrate from their homes, sometimes just for a few days and sometimes for years, in search of employment and survival. The number of such people is probably increasing, and in adivasi and Dalit areas migration can be the only source of cash income for many.

Yet, despite their large numbers, organising migrant workers has been a challenge for the mass movements, struggle organisations and political parties aiming at social transformation. The migrant workforce is inherently difficult to organise. The result is that migrant workers face intensifying exploitation and repression, making them one of the most vulnerable segments of the working class. The super-exploitation of migrant workers in turn has effects on the struggles of the rest of the working class, serving to deflect those struggles and to make it more difficult to develop a sense of working class consciousness. We have discussed some of these issues in the accompanying booklet to this one in more detail.

In this context, this booklet aims to discuss the constraints on organising migrant labour, as well as some of the legal, policy and strategic options that exist for responding to these constraints and building a larger struggle. The focus of this booklet is on seasonal migrant workers, though some of the points here may be relevant to other forms of migration as well.

This booklet is divided into three parts, as follows:

- *The Context:* Even among seasonal migrants alone, there is a large variety of work relationships and work situations. Each of the major types of migration has different implications for the legal and organisational options that exist for building workers' struggles. For instance, different strategies may be applicable in the case of large employers and small employers, in sectors with specific laws and those without, and so on. Some of these differences are discussed in this part of the booklet.
- *Legal and Institutional Tools*: Migrant workers have very little in the way of formal legal protection. Yet, there are some legal tools available that may be useful for building organisations among migrant workers. This part of the booklet discusses three types of such tools. The first is the major applicable labour laws – the Contract Labour Act, the Inter-State Migrant Workers Act, the Bonded Labour Act, the Industrial Disputes Act, the Trade Unions Act, etc. The second is some Supreme Court rulings that can be useful in expanding the applicability of laws. The third is laws specific to some sectors (such as those dealing with construction workers, domestic workers, etc.), the implications of which are briefly discussed here.
- *Strategic Options*: The last part of the booklet outlines some possible starting points for thinking about strategies for organizing migrant workers. The strategies are discussed at three levels: who we can approach and target when responding to immediate problems and issues, some possible options for building workers' organizations, and finally larger programmatic demands that can be made.

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Challenges of Organising

Most seasonal migrant workers face broadly similar problems, which are familiar in all rural areas. In brief, these include:

- *Non-payment or underpayment of wages*: Wage payments are usually in the form of piece rates, paid at the end of the season as the workers return to their homes. In many cases such wages are never paid or are underpaid. Employers vanish without paying wages or manipulate accounts to pay less. Wages are always far below the legal minimum as per the Minimum Wages Act (see under "Legal Tools" below for more on minimum wages). Piece rates are set so low that it is almost impossible to earn sufficient wages.
- *Unpaid and low wage work by family members*: Low piece rates in turn mean that, where households migrate together, the entire family has to work in order to earn what is, in name, the wage of the male member alone. Families may also migrate because they lack the resources to maintain members who stay behind. In both cases, the contractor denies wages for the other members of the family entirely or pays them only a nominal amount, but they have to work in any case. Women are generally paid only half wages and children often work for free.
- *Debt:* Migrant workers often begin the season in debt to their employer or *thekedar*, who usually pays them

an advance against their wages. The time just prior to migration is a time when workers are desperate for cash, given that their earlier supplies are running out and they require cash to purchase essentials and pay for travel. The advance given is usually itself too small to sustain the worker for these expenses, with the net result being to push the worker deeper and deeper into debt. This debt may then continue from season to season because the wages are so low and accounts are further manipulated.

- *Extreme working conditions*: In all work sites, safety precautions are non-existent. Construction workers work without basic equipment like hard hats and safety ropes. Industrial workers are denied any safety equipment, while fish workers, mining workers etc. are subjected to extreme environments which result in death on a regular basis. Injuries and illness are very common and are usually ignored by the employer and the *thekedars*.
- *Lack of basic facilities and dependence on employer for facilities*: Only very basic shelter is provided, with little or no access to water or food. In distant areas migrants cannot access the local PDS. Migrant workers depend on their employers or thekedars to provide these facilities, for which they are frequently over-charged in order to reduce wages further. Health care does not exist. Those who are physically vulnerable, such as the elderly, children or pregnant women, are often also forced to work in order to survive. Creches are unheard of; children join their parents in the work.
- *Violence and repression:* Beatings and killings are not uncommon. Workers who resist severe exploitation are often attacked, implicated in false cases or thrown out of work with no wages. This is of course true of all workers, but migrant workers are particularly vulnerable, since they are usually isolated from the local

population and entirely dependent on their employer for survival.

- *Exploitation of women*: Women workers are always paid lower wages than their male counterparts, and frequently have to do both wage work and domestic work (such as cooking and childcare). Sexual assault and molestation are very common. Since vulnerability is so high, women are unable to fight back and frequently have to submit to regular, repeated abuse in order to survive.
- *Bondage:* In some cases, debt extends to bonded labour. This is less common now but still occurs in many areas, particularly with adivasi workers.

In most cases, mass organisations or movement groups, where these exist, are already responding to these problems with respect to their members. Yet the kind of responses that are possible vary greatly depending on the kind of migration, the kind of work and the manner in which the work is coordinated and organised. Thus, though most seasonal migrant workers face similar forms of exploitation, the strategies for organising them will depend on these other factors.

In this part of the booklet, we outline how these changes can affect the options available for resistance. We can broadly summarise the major issues as follows:

- Type of employer
- Nature of work
- How are workers recruited?
- How are they managed?

Each of these is explored below.

Type of Employer

Employers of migrant workers vary from large corporations, including public sector companies and multinationals, to small producers like medium peasants. In most cases, however, the larger the employer, the longer the chain of

contractors whom the worker deals with. At times the worker may not even know who the actual employer is, and moreover the conditions of work often vary across work teams depending on the contractors and their agreements.

Larger employers may seem more difficult to organise against, firstly because of their size, and secondly because of the lack of a direct connection between worker and employer given the layers of contractors in between. It is also standard for large employers to try to wash their hands of responsibility for the workers, claiming that the contractor is responsible. The ability of large employers to buy off government officials also restricts space for organising and makes repression easier.

But at times it can also be easier to target larger employers, especially very large employers such as big corporations, because they can be more effectively attacked through using the tool of legal requirements. In law, the legal position is that the "principal employer" (see part II) can be held liable for work conditions, wages and workers' rights. Even if contractors are used, the principal employer has the ultimate responsibility for ensuring that labour laws are complied with. In terms of dealing with immediate problems, where it is possible to pressurise the administration in the work site area, these requirements can be used to deal with the issue. In the long term, the standards provided by legal requirements can be a uniform demand across work teams and contractors, and in some cases even across different employers. This makes building unity among workers easier. This is discussed in more detail in part II.

The law is less effective as a tool against small employers. Very small employers are in any case automatically exempt from the requirements of the Industrial Disputes Act and the Contract Labour Act, the two main laws that can be of use in organising migrant workers (aside from the Inter State Migrant Workers Act). Even where the law is technically applicable, small employers may simply vanish or declare themselves bankrupt if government officials are pressurised

into acting against them. The small size of their workforces also makes it more difficult to build strong workers' organisations. In most cases, small employers' workers also change every season (see below), making organising even more difficult. In the case of this form of work, workers' or mass organisations that have roots in the area of the work site are more likely to be able to organise the migrant workers at that site. Organisations in the home areas of the workers may have to instead attempt to organise the workers at the time of recruitment. Connections between organisations in home areas and work areas thus become particularly important for such workers. We discuss some of these possibilities in part III.

Nature of Work

There is a wide variety of different types of work that migrant workers engage in. Non-agricultural work, which forms the majority of employment, itself contains multiple variations. Some of the types of non-agricultural work include:

- Construction and earthworks (this is generally the largest sector)
- Salt pans
- Brick kilns
- Stone quarrying
- Mining
- Fishing
- Domestic work
- Sex work

Each of these sectors present different types of challenges for organising. Those that take place in more remote areas, such as mining and fishing, can make it easier for employers to ensure that the migrant workforce is kept completely isolated from the local people. This makes organising much more difficult and the workers much more vulnerable. Some sectors tend to be dominated by small employers - such as salt pans - while others include large employers.

The organising spaces provided in law vary very widely between sectors. There are sector-specific laws in several States that cover some types of workers, such as mining workers, domestic workers and construction workers. Some of these laws are discussed in part II. Such sector-specific laws often provide much stronger and more useful provisions for organising. In some cases - such as in the case of *mathadi* (headload) workers in Maharashtra or construction workers in Tamil Nadu - the demand for such laws was oriented towards providing uniform labour conditions and work relationships across the industry. The struggle for these laws, and the framework they created after being passed, makes it possible to build large-scale unity across workers. We discuss these possibilities in more detail in parts II and III.

In sectors that don't have sector specific laws, such as salt pans or brick kilns, the legal spaces are much weaker and are provided only by the general labour laws (excepting employers too small to be covered by labour laws, or sectors such as sex work and some types of mining, where the activity itself is against the law). Using the provisions of these laws as a minimum demand can still be useful as an organising tool, particularly against large employers.

All of these difficulties apply with even more force to agricultural work, where there is almost no applicable legal framework, no institutional machinery, and most employers are small. Organising migrant workers in this context usually needs to be part of a larger organising strategy in the local area of the work site. For organisations in the home area, targeting employers who come to recruit can also be useful.

Finally, the period for which workers migrate also varies with the type of work, from a few days at a time (as is common in agricultural work areas) to types of work where the worker returns home for only a few weeks in the year, such as domestic or factory work. The longer the period of migration, the easier it may be to pressurise employers, since it is more difficult to find replacement workers and to expel those who are resisting. Yet long term migration may also

make workers more dependent on their employers for all facilities and survival. In general, hence, organising long term migrant workers is more likely to require a politically active presence of the organisation either at the work site itself (among the workers) or in the local area of the work site.

How Are Workers Recruited?

There are four methods by which migrant workers are normally recruited:

- Through a *thekedar* or contractor (also referred to as a *mukkadam, sardar, khatadar,* agent, etc.) in the village
- Hiring at *nakas* or labour markets by thekedars or employers
- Through family members or caste/village members who have worked for the employer before
- Direct hiring in the village by the employer

All the four kinds of recruitment of migrant workers share the feature of dividing workers and making it difficult to build a unified struggle among them. Recruitment through thekedars is the most common. Thekedars and mukkadams are often members of the local community who act as agents of the employer, picking up workers and supplying them to employers. The workers' interest is most directly tied up with having a good relationship with the thekedar. Workers are thereby divided between thekedars, and it is much more difficult to build a unified struggle, since workers can easily be threatened or bought off by their respective thekedars. The key position of the thekedar has meant that many unions themselves have, over time, degenerated into de facto thekedars themselves, providing 'benefits' to workers by securing employment for them.

Similarly, hiring at nakas is often for short-term work, unpredictable and usually means working with different *thekedars* or employers each time. Workers at a naka have no common interest except in getting work. Direct hiring in villages and hiring through family networks is more secure,

in the one case because the employer hires the worker directly and in the other because there is usually a longer term relationship between the family/community and the employer. Yet in these cases as well, the employment of workers is usually dependent either on their familiarity with the employer or on their membership in a family network or community.

This divisive and personal nature of recruitment of migrant workers is central to what makes migrant workers so weak. Even in legal terms, the fact that most recruitment depends on informal personal connections makes it difficult to establish any formal contract, conditions of work or even proof that the worker was ever hired at all.

Hence, the first step in organising is to try to establish common conditions of hiring and hence common interests across workers. Wherever workers have registered gains through resistance, it has been because they were able to limit the variation and divisiveness of their labour conditions and labour recruitment. Organising thus aims to make the working relationship both more *regular* and more *formal*. We explore some possible strategies of doing so in part III of this booklet.

How are Workers Managed?

Finally, the manner in which workers are managed at the work site also makes a difference to how they can be organised. There are essentially three types of management in the case of most migrant workers:

- direct management by the employer, in the case of smaller employers;
- management through managers or foremen, as in factories and industrial work;
- management through thekedars, where the thekedar receives the money and manages payment, organises work and ensures production targets are achieved.

The last type, management by thekedars is perhaps most

common among migrant workers. The thekedars travel with the workers from the home areas, receive the wages for payment, organise the work teams and ensure that production targets are achieved. This system is used for sugarcane cultivation, construction work and most other types of large-scale work, other than industrial work (where technical knowledge may be part of management, and hence is often performed by local workers, as in Punjab). The use of thekedars as managers may make it more difficult to organise, in that the dependence of the workers on the thekedars is even greater. Where the thekedars are members of the local communty, it is however possible to target them more effectively in the home area.

In cases of more formal management, such as through managers, organizing can be easier as traditional trade union models are more likely to work. In such cases, though, it may be important to build local alliances in the work area, as the managers are likely to be members of the local community and may otherwise succeed in turning the issue into a "migrants vs locals" conflict.

Conditions of Work and Organising

Overall, the more the following are true, the more space exists for organising of workers:

- More formal work relations;
- More consistent terms of work, i.e. workers have relatively similar terms on which they work;
- More legal and institutional tools that workers can use to organise.

As a result, when we organise workers, our goal cannot only be to deal with immediate problems or to demand higher wages, better working conditions, etc. To build a large-scale organisation of workers, we need to also make demands that will make the work more *formal*, more *consistent* and provide more access to more institutional and legal tools for organising. The strategies discussed in this booklet aim at this goal.

2

Legal and Institutional Tools

This part of the booklet outlines some of the basic and general legal tools that can be used in organising migrant workers. First, though, it is important to keep in mind that labour law is not a solution in itself, and in particular there are two problems that arise when attempting to use these laws as tools for organising migrant workers:

- First, most of these laws are directly applicable only to the organised sector and particularly to industrial workers. The entire unorganised sector is only loosely covered by such laws. Migrant workers are not recognised as a separate category, except in the Inter State Migrant Workers Act.
- Secondly, as is discussed in more detail below, Indian labour law is mostly built on the assumption that the state will act as a guardian of workers. Hence, it is not designed to facilitate resistance and organising by workers themselves, and in fact often actively hinders that kind of organising.

Thus, when using law as a tool for organising workers, it is important to use the law strategically - as, for instance, a basis for demands - rather than attempting to use the legal machinery to achieve results in itself.

BASIC CONCEPTS

Labour law is built on two basic terms and ideas that are important to understand first, before entering into the

discussion of the law itself. These are the "employer" and the "worker." These are discussed in more detail below.

Principal Employer

The principal employer is the company, agency, individual etc. who is actually employing the worker for production (i.e., not the contractor). The Contract Labour (Regulation and Abolition) Act, 1972, defines the principal employer as

> "principal employer" means - (i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the Government or the local authority, as the case may be, may specify in this behalf,
>
> (ii) in a factory, the owner or occupier of the factory and where a person has been named as the manager of the factory under the Factories Act, 1948 (63 of 1948), the person so named,
>
> (iii) in a mine, the owner or agent of the mine and where a person has been named as the manager of the mine, the person so named,
>
> (iv) in any other establishment, any person responsible for the supervision and control of the establishment. (s. 2(g))

The essence of the definition is the last clause - "any person responsible for the supervision and control of the establishment."

Identifying the principal employer is important in using the law, as the principal employer is responsible for compliance with legal requirements and ensuring that workers' rights are respected, even if contractors do not do so. Contractors are much more difficult to target and to hold responsible than principal employers. As such, one of the key steps in organising migrant workers at a work site is to first identify who the principal employer is; the workers may not always know this.

Worker

Who exactly is a worker? On the one hand, does the term

include managers and agents? On the other, does it include daily wage labourers or casual workers who may not be on the official registers of the employer?

As defined in the Industrial Disputes Act, 1947, the term "workman" means:

> any person employed in an industry to do manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether terms of employment are express or implied. It includes a person who has been dismissed, discharged or retrenched in a dispute or whose dismissal, discharge or retrenchment has led to that dispute... (s. 2(s))

However, the term does *not* include:

- someone hired "mainly in an managerial or administrative capacity;"
- a supervisor whose salary exceeds Rs. 1600 per month;
- someone whose work is mainly "managerial" in nature;
- members of the military or other persons subject to military laws.

This basic definition is shared by most labour laws, though there are important variations that are discussed below. The essence of the definition is that anyone who works for some kind of 'reward' is a worker. This includes those whose terms of employment are "implied", i.e. those who do not have a formal contract. Employers often try to deny that migrant workers in fact work for them; this definition serves to clarify that they are still workers, even if there is no contract.

Legally, a worker who is hired by a contractor is not a worker of the principal employer (though the employer can still be held liable for his/her working conditions and wages), but a worker of the contractor. However, the courts have held that, where the principal employer controls the conditions of work and dictates both the work to be done and the way it is to be done, both the contractor and the

worker are workers of the employer (i.e. the "contracting" is a sham)[1]. This would be true in most migrant labour situations.

THE CONTRACT LABOUR (REGULATION AND ABOLITION) ACT, 1972

The most general law that would cover most migrant workers is the Contract Labour (Regulation and Abolition) Act, 1972 (henceforth called the Contract Labour Act). The weakness of this law - which was supposedly aimed at regulating and eventually abolishing contract labour - is one of the key reasons for the ability of capitalists to fragment and deflect workers' struggles by using long chains of contractors. Nevertheless, it provides a useful tool in challenging some immediate abuses and in terms of providing demands for organisations.

Applicability

The Act applies to any "establishment" (i.e. any government office or "any place where any industry, trade, business, manufacture or occupation is carried on") in which twenty or more contract workers were employed on any day of the previous year. It also applies to any contractor who has employed twenty or more workmen on any day of the previous twelve months. The term "contractor" in turn is defined as someone who undertakes to do something for an establishment by using contract workers. This does not include someone who simply produces goods and hands over the finished product to the establishment, but only someone who is part of the establishment's production process. For instance, a person who engages workers to build a road for a government agency is a contractor under the law; a person who merely sells sand to the agency is not.

The Act contains a loophole, in that it does not cover

1. *Ram Singh & Others v. U.T. of Chandigarh* (2004) I LLJ 227

establishments that "in which work only of an intermittent or casual nature is performed." The State or Central government is the authority to decide whether or not some work is "intermittent or casual"; the Act only states that any work that has taken place over more than 120 days in the preceding 12 months, or for more than 60 days in the case of seasonal work, cannot be considered "intermittent or casual."

The Act also applies to all contract workers hired by such establishments/contractors, regardless of whether the principal employer is aware that they have been employed or not. A contract worker is any worker who is employed by a contractor, excepting those in managerial or administrative positions or supervisors who earn more than Rs. 500 per month. There is an additional loophole: "out workers", namely persons who are given materials that they will work on in their homes or elsewhere, are not considered workers. Only those who work within premises "under the control and management of" (though not necessarily owned by) the principal employer are to be considered contract workers.

Registration and Licences

The Act contains two main parts: a part mandating registration/licensing of contractors and employers, and a part specifying minimum working conditions and rights of workers. Any employer who wishes to employ more than twenty contract workers at any point has to register with a registering officer appointed by the State Government. Only registered employers can employ contract workers. Similarly, any contractor who wishes to employ more than twenty workers has to get a license from the State government.

At the time of registration or applying for a license, the employer/contractor has to specify certain things, such as the number of workers to be employed, the duration of employment, the wages to be paid, the type of work etc. Violation of these conditions will mean withdrawal of the registration or the license, after which contract workers cannot be employed by the employer/contractor any longer.

The registering officer may also require that the contractor make a security deposit to guarantee compliance with the conditions of the licence.

As part of the procedure of providing the licence/registration, the government can also direct that certain types of work should not be performed by contract labour but that the concerned workers should be made regular employees.

Terms and Conditions of Work

The Act secondly mandates that contractors must provide certain minimum terms and conditions of work to contract workers. These include the following:

- Canteens
- Dining hall
- Rest rooms
- Drinking water facilities
- Latrines and urinals
- First aid facilities
- Creches

Women contract workers cannot be employed between 7 pm and 6 am.

In addition, the Act requires that the contractor must pay wages on a fixed date of every month. Whene employment ends, or if the work ends before time, the contractor has to pay the wages at most two days after work ends. Wages must be given directly to the worker or to someone authorised by him/her, and nothing can be deducted from the wages except for deductions that are permitted by the government. Further, the principal employer has to have a representative present when the wages are paid, who has to certify the wage register as well.

In case the contractor fails to provide any of these facilities or does not pay the wages adequately or on time, the principal employer is required to pay these wages/provide these facilities. These facilities and wages have to be provided regardless of any agreement between worker and contractor/

employer; even if a worker signs an agreement saying they will not demand these facilities, they must still be provided.

Records and Registers

Principal employers are to maintain registers of contractors in their establishments, while contractors must maintain registers of workers employed by them. The contractors are further required to issue job cards to each worker within 3 days of employment, and must issue a service certificate at the end of the employment. The contractors also need to maintain muster rolls, wage registers, registers of deductions/fines/advances/overtime, etc. These registers need to also be signed by the workers. Finally, a notice should be put up regarding the terms and conditions of work and including the names and addresses of the government labour inspectors appointed under the Act. The notice should be submitted to the labour inspector, as should a form containing details of the start and completion of contract work (which has to be submitted by the principal employer). Various government authorities also have the power to demand records and information from contractors and employers on contract workers.

Institutional Structure and Action in Case of Violations

The State and Central governments are to appoint Advisory Boards to advise them on how to implement the Act. They are also to appoint labour inspectors to ensure that the Act is being complied with. The inspectors are to ensure that contract workers are not being employed by unregistered employers or unlicensed contractors, and further that the Act's requirements and the licence/registration conditions are being complied with. In case of violation of the Act or the conditions of a licence/registration, punishment of up to 3 months in jail or a fine of Rs. 1000 can be given.

However, and this is perhaps the best indicator of the nature of the Act, no case can be initiated against an employer

or contractor except by the labour inspector or with his/her prior permission.

Usefulness in Organising

It is quite obvious that the Contract Labour Act has not been enforced as per its provisions. Yet this is not only because of the "lack of will" of the state or because of corruption. The Act contains within itself a basic contradiction. On the one hand, the structure of registration and licensing is meant to make it easier to regularise and formalise the labour arrangements between contract workers, contractors and employers. But this registration provides no benefit to workers or to employers. Further, the basic punishment for failing to register, or for violating the registration conditions, is that the employer/contractor loses the power to employ contract workers. In other words, workers who take up a violation of the Act, even assuming they are heard and the Act is implemented fairly, could create a situation where they lose their own jobs. The Act's institutional structure is in fact a hindrance to organising, because it prevents workers from demanding their rights under the statute. The Act simply assumes that the government inspectors will do their job and that there is no need for any space for workers themselves to resist and demand their legal rights. Indeed, workers cannot even register cases under the Act; even that minimal right is reserved for the inspectors. In practice, of course, this results in the Act remaining a dead letter.

Does this mean the Contract Labour Act is useless to organising? No, for its standards provide a basic floor for demands that can be made. Politically, it is useful to have a clear minimum listing in law; and even legally, the provisions of the Contract Act constitute statutory rights of workers, regardless of whether or not the State chooses to enforce them. These rights have in fact served as the basis of some of the "progressive" court cases discussed below. Further, the Act's clear legal provision that principal employers are liable for providing wages and facilities to workers is useful, as

discussed earlier, in organising against large employers. By demanding that these rights be provided and through demanding registration of criminal cases, the Act can be a useful political and legal tool in pressurising the administration and employers.

Finally, the principle of registration is in itself important, but it requires a different institutional structure as well as a system of registering workers themselves, such as that provided in the sector-specific laws discussed below.

INTER-STATE MIGRANT WORKMEN (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) ACT, 1979

The Inter-State Migrant Workmen Act (ISMW Act) is India's only central statute that specifically covers migrant labour. The Act was originally introduced ostensibly because the Contract Labour Act failed to serve the purpose of protecting inter-state migrant workers, particularly those originating in Orissa[2]. Yet in fact the ISMW Act is very similar to the Contract Labour Act, with some small, though not insignificant, changes made to address the specific issues of inter-state migrants.

Applicability

The ISMW Act applies to every establishment and every contractor who has employed five or more "inter-state migrant workers" for at least one day in the past month. An "inter-state migrant workman" is a person recruited by a contractor in one State under an agreement for working in another State. The terms "contractor", "establishment", "principal employer" and "workman" are defined in similar language to that used in the Contract Labour Act, except that the exception for "out workers" - the loophole referred to in

2. See the Statement of Objects and Reasons for the Act, which refers to the "Dadan labour system."

the Contract Labour Act - does not exist in the ISMW Act. In other word, even workers who are given material to work on outside the work site (which, however, is rare among migrant workers) are still legally entitled to the protection of the Act.

Registration and Licences

As with the Contract Labour Act, the ISMW Act bars any employer or contractor from employing inter-state migrant workmen except with a registration or a licence respectively. These provisions are similar to those in the Contract Labour Act.

Terms and Conditions of Work

Since seasonal migrant workers are in any case always contract workers, they are entitled to the basic standards laid down in the Contract Labour Act. The ISMW Act then adds a few additional standards that are specific to migrant workers, and in particular regarding their wages. The Act requires that the wages should be similar to that of local workers (and in all cases above the minimum wage), should always be paid in cash, and must include an allowance for the journey and for displacement from their home area.

Further, the Act provides that any loan obtained by a migrant worker from their employer/contractor during employment will be cancelled automatically when employment ends. As in the Contract Labour Act, the ISMW Act also holds the principal employer responsible for ensuring that these wage payments and facilities are provided in case the contractor fails to do so.

Institutional Structure and Action in Case of Violations

These are almost identical to those in the Contract Labour Act, excepting that the punishments are higher. As with the Contract Labour Act, the two basic punishments are revocation of licence / registration and criminal prosecution

by, or with the sanction of, the government Inspector. Inspectors from originating States can enter the States of work sites (the Supreme Court has held that, contrary to the provisions of the Act as such, this can be done without the consent of the host State as well[3]). Workers can also take up industrial disputes either in the State where they work or in their home States, though such disputes have to be taken up within six months of the end of work. Complaints under the Act can be made to officials either in the home State or the work State within the specified time period. The Central government or the government of the home State can also transfer case hearings from the work State to the home State, with the consent of the State government of the work State.

Usefulness to Organising

As with the Contract Labour Act, the ISMW Act is more useful as a statutory framework of rights than for the institutional machinery it provides. This is also true as the majority of migrant workers do not cross state boundaries and hence cannot use the Act. Where the law is applicable, however, the provisions for taking up cases in the home State are useful under certain limited circumstances: first, where the organization can place sufficient pressure to get both the governments of the home and the work State to act (since this is a requirement for effective legal action under the Act), and second where the migrant is not interested in re-obtaining work with that employer and therefore the registration of the employer is not a concern. The specific standards of this Act are also easier to demand than the more general ones provided in the Contract Labour Act.

BONDED LABOUR SYSTEM (ABOLITION) ACT, 1976

The key legislation on bonded labour in India, the Bonded Labour System (Abolition) Act can be very useful, as it covers

3. Ruled by the Supreme Court in *Dr. Damodar Panda and Ors. vs. State of Orissa and Ors.* (1990 SC (4) 11 JT).

most common forms of debt-induced and other forms of forced labour. Though the law has hardly been implemented and has no real institutional machinery, it has particularly stringent provisions that can be used against employers of bonded workers and others who are using force.

Applicability

Under the Act, if:

- as a result of an advance given to him/her or his/her descendants or ancestors, or as a result of customary/ancestral/social/caste/community obligations, a person agrees to
- provide labour or service to the lender, either by himself/herself or through his/her family, without wages or at nominal wages; or
- give up his/her freedom of employment or other livelihood means; or
- give up his/her right to move freely throughout India; or
- give up the right to buy or sell any property or his/her own labour power,

that person is performing bonded labour (s. 2(g)). The Act goes on to specifically clarify that any person who is a contract labourer as per the Contract Labour Act or who is an inter-state migrant worker under the ISMW Act, and who gives up any of the freedoms or makes any agreement as described above, is performing bonded labour.

The Supreme Court has also held, in the Asiad Workers Case (see below), that workers who are paid less than the legal minimum wage are performing forced labour. Working for less than the minimum wage would therefore, in strict legal terms, come within the definition of bondage as per the Bonded Labour Act.

Where a worker claims that they are working under bondage, or a Vigilance Committee (see below) makes a

similar claim, this is assumed to be true unless the employer/lender can prove that it is not. The burden of proof is thus on the employer.

Basic Provisions

The Act outlaws all forms of bonded labour. It states that, on the date of commencement of the Act and henceforth afterwards, all debts that require people to perform bonded labour (in the terms given above) are automatically cancelled. The Act further provides that any property held by the lender in connection with a 'bonded debt' must be restored to the bonded labourer. Any mortgage, lien, or other claim on the property of the bonded labourer by the lender will also be cancelled automatically.

Moreover, a bonded labourer cannot be evicted from his/her residential premises or homestead after being freed from bondage.

Finally, lenders are actually barred from accepting any further payment from bonded labourers in connection with the debt to be paid, and it is a criminal offence for them to do so.

After a bonded labourer is freed from bondage, the District Magistrate is to ensure "as far as is practicable" that his/her economic interests are "secured" so as to ensure that the worker does not end up in bondage again. This includes providing credit, etc.

Institutional Structures and Action in Case of Violations

The Bonded Labour Act has hardly been implemented, except where issues have been taken up by organisations. The main reason for this is the very weak institutional structure that is provided. First, the State governments are mandated to give "sufficient powers" to District Magistrates to implement the Act and to appoint officials to do so. The powers that have been given vary from State to State. Further, District Magistrates are given a general

responsibility to enquire into whether or not bonded labour exists in their district, and to ensure its eradication and the freeing of bonded labourers.

Finally, the Act also provides for the creation of "Vigilance Committees" in each district, consisting of the DM, three SC/ST's nominated by him/her, two social workers, three representatives of official agencies concerned with rural development and one person representing lending institutions. This Committee is supposed to conduct surveys for cases of bonded labour in the district, keep track of the number of cases registered under the Act, assist in ensuring that aid and credit is given to freed bonded labourers, and help defend bonded labourers against court cases seeking recovery of debts from them.

As far as punishments are concerned, the Act is quite stringent. Any one who issues a loan under terms of bondage, or who compels somebody to work under bondage, or who tries to enforce an agreement or tradition that results in bondage, can be sentenced to up to three years in jail. Anyone who abets them in doing so - including, for instance, government officials who do not perform their duty - can be given the same punishment. Those who fail to restore property to bonded labourers where they are required to do so by the law can be sentenced to up to one year in jail.

Further, the trial of such offences are conducted by the Executive Magistrate, not the ordinary criminal courts, with the intention of making trials quicker.

Usefulness in Organising

While it provides no specific institutional machinery that is accessible by workers, the stringent punishments in the Act and the broad definition of bonded labour make it very useful as a tool against forced or coerced labour. Unlike the other labour laws discussed here, there is no need to approach the labour commissioner, labour inspectors or other government agencies - a police case can be filed directly against the concerned officials or employers. The provision stating that

the burden of proof is on the employer makes it possible to do so even where no record exists.

INDUSTRIAL DISPUTES ACT, 1947

One of the most basic elements of Indian labour law, the Industrial Disputes Act lays down certain rights for workers and creates the institutional structure of labour courts, tribunals etc. that are familiar in most areas. The full details of the Act's provisions and machinery are beyond the scope of this booklet and are available in other materials. The discussion here will be limited to outlining some of the areas that can be of use in organising migrant workers.

Applicability

An 'industry' in labour law is not limited to industrial work or factories alone. The definition of industry provided in the Act is as follows:

> any systematic activity carried on by co-operation between an employer and his workmen (whether such workmen are employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature), whether or not, -
>
> (i) any capital has been invested for the purpose of carrying on such activity; or
> (ii) such activity is carried on with a motive to make any gain or profit.

What this actually means has been the subject of some controversy. In the *Bangalore Water Supply* case[4] , the Supreme Court stated that any activity that satisfies the following three conditions is an industry:

4. *Bangalore Water Supply and Sewerage Board etc. vs. R. Rajappa and Ors., (1978) 3 SCR 207.*

- it is a systematic activity;
- it is organised through cooperation between employer and workmen;
- and it is for the production and/or distribution of goods and services for people's wants and needs, other than religious and spiritual ones.

This would therefore include almost all organised production processes in the country. The government subsequently tried to explicitly amend the IDA to exclude many types of activity (agriculture, hospitals, etc.) from this definition, but the amended definition does not appear to have been brought into force as yet.

Specific provisions of the IDA have other restrictions on whether or not they can be enforced for all establishments (for instance, many of the stricter provisions on retrenchment of workers and on closure of factories apply only to factories or establishments that employ more than a certain number of workers).

Basic Provisions

The essential concern of the IDA is with handling "industrial disputes". The general definition of industrial dispute provided in the Act is:

> any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person; (s. 2(k))

The Act therefore in fact covers all conflicts at the work site. However, the Act also has specific provisions for covering the following kinds of disputes:

- Retrenchment (i.e. removing a person from work)
- Lay-offs (i.e. when a worker is not provided work due to a shortage of money or raw materials)
- Strikes

- Lockouts (i.e. when the employer prevents workers from working)
- "Unfair labour practices"

One key problem with the Act is that most of its provisions protect workmen who have been in employment for a period of more than one year. Further many of the more strict provisions apply only to establishments larger than a certain size (such as 50 workers or 300 workers). These two requirements automatically exclude most migrant workers from the letter of the law.

The Act can also be dangerous to workers' organisations given its provisions on strikes and lockouts. The Act prohibits any strike or lockout when proceedings are pending before a Board of Conciliation or a Labour Court (see below). Such proceedings can be started either by the worker or the employer, or even by a reference by the Government. Once the proceedings begin, which can drag on for years, strikes on that issue are generally barred. The Act not only penalises "illegal strikes" but also bans anyone from "instigating" or providing financial aid to illegal strikes and/or lockouts. These provisions in turn are even stricter with enterprises that are defined as "public utilities", in which no strike is permitted without six weeks' prior notice and all disputes have to go through a "conciliation officer" (see below) first.

In practice, the lockout provisions are rarely enforced against employers, but the bans on strikes are used against workers' organisations on a regular basis.

Finally, one potentially useful area of the law is the bar on "unfair labour practices", which include the following (see the Fifth Schedule of the Act for the full list):

- threatening or forcing workers to not join trade unions
- attempting to buy off workers by increasing wages to prevent them joining a union
- attempts by employers to create company-sponsored unions among workers

- discriminating against union members or firing union leaders
- using contractors or new workers to break strikes
- employing casual or contract workers "for years" to prevent them from securing the benefits of permanent workers
- on the part of the workers or a trade union, forcing others to join a union or a strike, gheraoing managers or engaging in other 'coercive activities.'

All such unfair labour practices are criminal offences under the Act and may serve as a useful tool to pressurise employers of migrant labour as well.

Institutional Machinery

The IDA requires the government or employers to set up a series of institutions for handling "industrial disputes", namely cases where workers or employers allege that their rights under the Act have been violated. Some of these are:

- A *Works Committee* in any establishment employing more than 100 workers. The Committee should have equal numbers of representatives of the employer and of the workers and is for discussing general issues of management, grievances etc.
- *Conciliation Officers* who "help" employers and workers settle disputes and reach agreement.
- A *Board of Conciliation* to whom the government can refer disputes which cannot be resolved by the Conciliation Officer.
- *Labour Courts* to decide certain types of industrial disputes, but only on a reference from the government, or when one of the parties applies to the government for such a reference. Even in the latter case, the government has to be convinced that whoever applies represents the "majority" of those involved.

- *Tribunals* that can decide other types of industrial disputes, including over wages, holidays, etc. Disputes have to be referred to tribunals by a reference by the government, as above with the Labour Courts.

Usefulness to Organising

This institutional set up, and in particular the labour courts, constitutes the basic machinery of dealing with labour conflicts in India. All of these institutions generally act to prevent direct worker organising and resistance from settling disputes, including through the bars on strikes noted above. Approaching this legal machinery is thus not advisable unless there is a specific grievance to be addressed, and even then, as discussed below, there may be other legal options than going directly to the labour redressal machinery.

The prohibition on unfair labour practices, as noted above, may be a useful shield to use against employers who attempt to break trade unions and who refuse to regularise workers. This is also more true in the wake of some of the Supreme Court rulings discussed below.

TRADE UNIONS ACT, 1926

A colonial statute governing the creation and operation of trade unions, the Trade Unions Act is India's main legislation on unions. It is basically concerned with three areas:

- the forms, manner and rules according to which a trade union can be registered with the government;
- how that trade union can spend its funds; and
- protecting trade union office bearers and members from being sued for certain types of activities.

The first is a procedural matter that has been held by the courts to be a right of any trade union that supplies all the required technical details (names of office bearers, memorandum of association, accounts, etc.). At most one half

of the office bearers can be non-workers. Regarding trade union funds, the Act lays down that unions can spend their funds for various purposes such as salaries of office bearers, benefits to members who have lost family members, fighting legal cases, etc. The Act also states that a separate fund can be used for political purposes such as putting up a candidate in elections or supporting a party, though no member of the union can be forced to contribute to such a fund.

The last area, namely the legal protection given to unions, is the most useful part of the Act. A registered trade union and its members cannot be sued in civil court for business losses or other problems caused by them going on strike or otherwise organising workers. Further, except where it can be proved that they decided to commit a criminal offence themselves, the police cannot register a case of criminal conspiracy against a union's members and office bearers for any damage or loss they might cause to an employer. These two protections can be useful in preventing harassment by employers against union organisations. For this reason, a registered union is in a better position to organise than an unregistered body.

MINIMUM WAGES ACT, 1948

The Minimum Wages Act, 1948, provides a system for fixing both minimum wages and maximum working hours for all the types of work specified in a Schedule attached to the Act (and including most common kinds of unskilled work, such as construction, agricultural work, etc.).

Fixing of Minimum Wages and Working Hours

The wages and working hours are to be fixed by the government, with the wages being revised at least every five years on the basis of the cost of living index increase in that time. The government can also appoint a committee or sub-committee to inquire into the changes in prices, wages, etc.

The working hours should include breaks and a day of

rest. Employees who work for more than the specified working hours are to be paid at an over time rate.

The term "wages" here means any compensation that is equivalent to a certain amount of money, except the value of any house accommodation, light / water supply, medical attendance or anything else excluded by the government, contributions to provident fund etc., travelling allowances, payments to workers for special expenses required by their work, and gratuity payments.

Institutional Structure and Action in Case of Violations

The first step in legally addressing a claim for minimum wages is to move a "claim petition" before the Labour Commissioner, labor office or other authority set up by the State Government, who can direct an employer to pay compensation. The Act also provides that an employer can be sent to jail or fined, but only if the claim petition was decided in favour of the employees. In case an employer is not paying overtime or is requiring work of more than the maximum working hours fixed by the government, a case can be filed directly against the employer - but, again, only by the government's labour inspector or with his/her sanction.

Usefulness to Organising

Since minimum wages are practically never paid for casual or daily wage work, leave alone migrant work, this law serves as a useful starting point in terms of demands when organising. Legally, the strength of this tool has been increased by two Supreme Court rulings. The first held that all employers have to pay minimum wages and cannot plead that they don't have the money, and moreover that fixing the minimum wage cannot be based on whether or not employers will be able to pay[5]. The second ruling held that

5. *Management of Shri Chalthan Vibhag Khan Udyog Sahakarimandal vs. B.S. Barot, Member, Industrial Court, Gujarat and Anr. Etc.* (1979 (4) SCC 622).

non-payment of minimum wages made the work equivalent to forced labour (see below on the Asiad Workers Case).

OTHER LAWS ON WORKING CONDITIONS

In addition to the above laws, there are a range of laws that specify particular types of working conditions and ban certain types of work. These include:

- The Factories Act, which specifies the minimum safety, health and other working standards that have to be in place in all factories;
- The Equal Remuneration Act, which requires equal payment to men and women and prohibits discrimination against women;
- The Child Labour (Prohibition and Regulation) Act, which bans employing children below the age of 14 in certain industries and lays down minimum working conditions for all children;
- The Shops and Establishments Act, which sets minimum standards and working conditions for workers in shops and trading establishments;
- The Maternity Benefits Act, laying down standards for maternity leave and pregnant workers;
- Various State laws on specific sectors, many of which provide more detailed standards.

These can also be useful in organising, mainly as a benchmark for demands and depending on the sector being targeted.

IMPORTANT / USEFUL COURT RULINGS

During the 1980's and part of the 1990's, the Supreme Court underwent a phase of "progressive jurisprudence" in which a series of socially concerned judgments were issued. Among the areas that the courts took up was expanded notions of workers' rights. These rulings have had no impact on actual conditions of work, but they are useful as a tool of organising, particularly when an organisation seeks to use the courts.

However, it should also be noted (as we discuss below) that the Supreme Court's position has swung towards the right wing in recent years, and it is now steadfastly anti-labour on most issues.

People's Union for Democratic Rights vs. Union of India and Ors. (Asiad Village Workers Case) (1982 AIR 1473)

In this famous case, the Supreme Court held that non-payment of minimum wages amounts to forced labour, and is therefore in violation of Article 23 of the Constitution (which prohibits forced labour). The immediate legal implication is that workers who are not paid minimum wages can take action under laws that bar forced labour, as well as approach the High Court or the Supreme Court on grounds that their constitutional rights have been violated (for which see the discussion below on approaching the courts). In this particular case, the Court directed the Delhi government to ensure that the provisions of the Minimum Wages Act, the ISMW Act, the Contract Labour Act and other similar statutes were complied with for the predominantly migrant construction workers who had been employed for the Asian Games.

Bangalore Water Supply and Sewerage Board etc. vs. R. Rajappa and Ors., (1978) 3 SCR 207

In this case, as discussed above under the Industrial Disputes Act, the Court expanded the definition of industry. The aim was to ensure that the infrastructure and protections of the Industrial Disputes Act extends to all workers in all establishments, rather than only those in formal commercial factories. This is of use particularly with respect to large employers, given the provisions of the IDA noted above.

Daily Rated Casual Labour Employed Under P&T Department vs. Union of India and Ors., 1987 AIR 2342

In this case, the Supreme Court held that casual workers cannot be discriminated against in wages and other working

conditions, even if they are not extended all the benefits of regular workers. If they are doing similar work to other workers, they should be given the same conditions and similar wages. The same principles would apply to migrant workers.

In this case the Court also directed that the workers should be regularised, for which see the next set of cases.

Bhagwati Prasad vs. Delhi State Mineral Development Corporation, 1989 Suppl. (2) SCR 513 and Dharwad Dist. PWD Literate Daily Wages Employees vs. State of Karnataka and Ors., 1990 AIR 883.

These were among the main cases in a string of rulings in which the Supreme Court held that casual and daily wage workers - therefore including long-term migrants - cannot be kept in that position forever, and have a right to be regularised and given permanent employment. While these judgments do not immediately apply to seasonal migrant workers, they form another precedent for claiming that seasonal migrant workers also have rights similar to permanent workers and cannot be denied those basic rights on grounds that they are only casual or daily wage workers.

Secretary, State of Karnataka & Ors vs. Uma Devi & Ors (2006 II CLR 261)

This final case is included not because it is useful, but because it is dangerous, and has come to symbolise the change in the courts' attitude to labour law. In this ruling the Court overturned several of its earlier rulings on regularisation of casual and daily wage workers and held that they have no right to regular employment, even if they have been casual workers for a prolonged period. The reason given was that long-term employment of casual workers is itself illegal, and hence the workers cannot claim regularisation on the grounds of illegal employment. Such an argument—which is manifestly self-contradictory - is a clear indicator of how the

higher judiciary now views many aspects of labour law, and it is important to keep it in mind when attempting to use the courts as part of organising.

SECTOR-SPECIFIC LAWS

The last set of legal tools that may be of use are laws passed that apply to specific sectors or, in one case (Tamil Nadu), to all "manual workers." Examples include:

- The Maharashtra Mathadi, Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act, 1969
- The Tamil Nadu Manual Workers Act, 1982
- The Maharashtra Domestic Workers Act, 2008
- The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 and The Building and Other Construction Workers' Welfare Cess Act, 1996

These laws all have a fairly similar structure, which usually includes the following elements:

- Creation of one or many autonomous tripartite Boards consisting of workers' representatives, employers' representatives and government officials. These Boards are usually the central institutional body that manages the implementation of the concerned Act.
- Registration of employers and workers with the Boards, in a similar manner to what is required by the Contract Labour Act or the Inter State Migrant Workers Act, except that in this case workers also register in order to receive benefits and protection.
- Contributions by employers, workers and the government to welfare funds which are managed by the Boards, and which usually cover health care, gratuity funds, pensions, etc.
- In the case of the stronger laws, such as the two

> Maharashtra laws above, all payment of wages is through the Boards. The employers deposit wages with the Boards, which disburses payments to the workers.

The proposed Unorganised Sector Workers Bill, which was eventually reduced to a welfare scheme and was finally not passed by the UPA government, initially followed a somewhat similar structure.

Such sector-specific laws are useful for organising at two levels. In terms of immediate grievances, the Boards are easier to target than government officials, and moreover have a wider range of powers and funds at their disposal. Wages are more openly fixed, and it is harder to escape payment of wages.

Second, at the level of building workers' organisations, these laws provide much more space. Registration of workers imparts a formality to the work relationship. The creation of an autonomous body with some worker representation gives a space to build a movement across the sector, aimed at pressurising this body or its members to act. Collective bargaining on wages across the sector also becomes possible, as is done in parts of Maharashtra for the mathadi workers. The structure of these laws thus contributes to overcoming the key problem that is faced by casual labour in general and migrant workers in particular: the divisive, particularistic and informal nature of labour relations that makes organisation building more difficult.

These laws are of course far from ideal, and naturally their provisions too are not implemented in full. But these two sets of benefits mean that they can form a key focus of organising. Where such laws are applicable, they can be the basis of building organisations and demands for including migrant workers. Where these laws do not exist, the demand for such frameworks can itself be a strategic demand of the movement.

3

Some Strategic Options

Migrant workers' situations vary so widely that strategies will have to change from sector to sector and area to area, as in a sense is true of all political struggles. Here, we outline a few possible options as a starting point for considering what might be the most appropriate way to build resistance and organisations among migrant workers.

WHO CAN WE APPROACH/TARGET?

At the level of workers' immediate grievances, and in order to build an agitation around a specific issue, there are various options for whom to target (other than the employers themselves, of course). Possibilities include the following.

> **NB:** An important point to note when attempting to use labour law is which government to target. In general, this is the State government, but for certain types of work the Central government has legal responsibility. These include works by Central government agencies and central public sector corporations, mines, major ports, oil fields, railways, Cantonment Boards, and any other industry specified as such by the Centre.

Labour Commissioners at the Work Area

Labour commissioners are the government officials usually responsible for implementing most labour laws, including the Contract Labour Act, the Industrial Disputes Act, the Minimum Wages Act and so on. In most cases, given the

structure of Indian labour law and the lack of space for workers to hold them accountable, these officers are corrupt and apathetic. Migrant workers are usually ignored entirely by their activities.

In the case particularly of large employers, Labour Commissioners can be a good target for agitation and action. Moreover, as we saw above, many laws require action by the government labour officials before any other legal steps can be initiated. This gives a basis for demanding action by the Labour Commissioner against an employer.

Which Labour Commissioner should be targeted depends on which government is responsible (i.e. Centre or State), as noted above. Typically the Commissioner of the work area is the target person, though in the case of inter-state migrants, the Commissioner for the home area can also be targeted. A complaint letter to such a Commissioner can be followed up with pressure and agitations.

Note: in the case of inter-state migrant workers, pressure can be brought on the local Labour Commissioners of the home area to use their powers under the ISMW Act to take up the matter in the work area State.

Police

The second option is to pressure the police to register cases. This cannot be done for purely "labour" issues such as wage payments, but is most useful in the following circumstances:

- Where physical violence, illegal detention or harassment has occurred, which is true in most areas;
- In cases where the Bonded Labour Act (see above) would be applicable;
- In cases where the SC/ST (Prevention of Atrocities) Act would apply. Note also that the SC/ST Act also makes it a criminal offence for officials to not fulfill their duties, and it thus can be a weapon to pressurise the authorities.

A police case can even be registered in the home area, though that is much less effective.

Where police cases are a possibility, these are generally much more effective as a tool than attempting to use the labour law machinery. The police are unlikely to register a case without an agitation, but once such a case is registered, the pressure on the employer is much greater. There is also no need to wait for the ruling of a Labour Court or action by a Labour Commissioner, and in the interim, while the case is proceeding, action by the organisation can continue without facing potential legal hurdles. Finally, police cases are also much more likely to work as a tool against smaller employers, who may otherwise not be concerned with labour law.

District Administration

The SDO and the District Collector are other possible targets, particularly in the work area. They are both responsible for overall administration and have a specific responsibility under the Bonded Labour Act (and therefore can face criminal cases under the SC/ST Atrocities Act if they fail to do their duty). Pressure and appeals to these officials can help, particularly if they can be combined with intervention by higher officials.

The Courts

Following the "progressive" rulings of earlier decades, many labour organisatios have made approaching courts a key part of their actions. But this is a potentially dangerous approach and should only be done with a clear idea of the dangers and as part of a larger strategy. At the local level, in general it is not effective to approach the labour courts with a labour dispute, unless there is a need to address a very specific grievance (such as illegal closure or non-payment of retrenchment compensation). These institutions take a very long time to resolve matters and have a damaging effect on the ability of the organisation to act.

The more popular approach is to file a case before the higher judiciary (the High Courts and / or the Supreme Court) through the method of a writ petition for violation of fundamental rights (or a public interest litigation). The progressive rulings of the Supreme Court noted in the previous sections have made it legally possible to take many labour issues up in this manner, as they have identified labour laws and their provisions as fundamental rights of workers. Yet some of these rulings have since been overturned, and the attitude of the courts has become strongly anti-labour, as noted earlier. Given this, writ petitions can only be effective if used on specific, clear cases of abuses involving large numbers of workers, and must be calculated in such a manner as to avoid potentially adverse consequences (such as a judgment that deprives workers of rights or that bars strike actions, as are very common now). Court cases are not a substitute for organising workers and agitations and will only work if they are used in coordination with other actions, such as where the organisation is strong enough to agitate but not strong enough to secure a victory through political action alone.

In sum, before approaching the courts, a calculation has to be made of the likely result of the case, the specific goal that is being targeted and whether or not the case will strengthen or weaken organisation building. Approaching the courts without such a strategy will result in further loss of organizing space and even more attacks on legal protections by the judiciary.

BUILDING ORGANISATIONS

Possibly the most difficult question when organising migrant workers is how to go beyond addressing immediate grievances. Organising a union requires cadre, work site organisers and the ability to stage coordinated actions. These are very difficult to create in circumstances where workers face extreme violence and repression, are dependent on contractors and employers for survival, and are often

changing work sites frequently and hence rarely have the same employer as before.

Beyond basic awareness raising and publicity over the legal provisions available and the possibilities of labour organizing, there are a few initial principles that can be attempted in most areas. These may be able to create a space where organising can begin. These include:

Organising at the Time of Recruitment

The extreme weakness of migrant workers at their actual work site means that they are better placed to organise and to coordinate in their home areas. Where a mass organisation is strong in the home area of migrant workers, steps can be taken to organise when people are being picked up for work.

For instance, one strategy that was decided upon in the Mazdoor Hakk Parishad in Maharashtra in 2003 revolved around ensuring consistency and registration of workers and contracts in the village. In this case the attempt was for each village to pass a gram sabha resolution requiring contractors and employers to negotiate contracts with villagers in gram sabha meetings. The recorded wage agreement can then be approved through a gram sabha resolution, along with a record of the workers being picked up. Workers who migrate would be issued with pass books by the gram sabha regarding their work site, the contractor they are working for and the wages agreed to be paid. If the panchayat is a friendly or effective body, the registration could be made with them as well. Where the gram sabha is not accessible or dominated by hostile community members, the union itself can insist on registration of contractors and workers, though this is less likely to work without community support (this option was not part of the Parishad decision).

In order for such a strategy to work, however, it has to be done simultaneously over a sufficiently large area and be preceded by sufficient publicity and mobilisation to clearly state the advantages that such a process can bring workers. Otherwise, contractors and employers will simply stop hiring

from such villages and/or stop hiring registered workers and union members. Workers themselves may then avoid the process in order to get work. Despite concerted efforts to the contrary, this occurred in some areas that attempted to implement the Parishad decisions, though the organization is still pushing the strategy forward to overcome these difficulties.

A second strategy decided upon was to demand that Labour Commissioners or their officers should be present at the other major site of hiring, namely the *nakas* and roadside markets where workers are picked up for work. They can then be required to record hiring agreements and duties of workers, as well as the names of contractors and employers. The latter is in fact their duty under the Contract Labour Act. Moreover, either the government or the labour organization itself should put up sign boards at all such hiring sites specifying the minimum wages and basic facilities that are the entitlements of workers under labour laws.

Both these strategies aim at bringing a higher degree of formality and consistency to contracts and hiring of migrant workers. This in turn makes it possible for workers to organise together with common interests. The result can also be the beginning of struggles over wages and facilities.

Coordination Between Organisations in Home Areas and in Work Areas

In the case of long term migrant workers in particular, a presence in the area of work can be important. If there are organisations in both the home and work areas, it becomes possible to coordinate action both on individual cases and on ensuring that agreements made at the time of recruitment are actually being followed. This can be far more effective at generating results and developing a base for the union than organising at either site alone. Even if the organisation at the work area is not able to organise workers at the work site directly - as is often the case due to the isolation of migrant workers - it can still act as a contact and a resource. This

would in turn strengthen the base of the union. For these reasons, when initial organizing is being attempted, it may be more effective to focus on the streams of workers who are going to areas where allied organizations exist.

Coordination with Existing Unions in the Work Area

Where mass organisations or allied groups do not exist in the work area, it is often the case that there are other unions working in the same sector with local workers in that area. Such unions often do not directly organise migrant workers, partly because of the difficulties of doing so and partly because local workers may see migrants as undercutting their jobs. However, for precisely that reason, unions that are genuinely militant may welcome an opportunity to coordinate with migrant workers' organisations. This in turn can greatly strengthen the ability to organise in the work area. Moreover, it opens the possibility of sector-wide struggles that cover both migrant and local workers, as has occurred in many of the major unorganised sector labour struggles in various areas.

PROGRAMMES AND DEMANDS

As we aim to build a larger movement around organising migrant workers, the issue of identifying a larger set of programmatic demands arises. In addition to the general struggle for better wages, working conditions and political change, some general possibilities that could be considered for such demands are as follows:

Legal Frameworks for Organising

If demands are framed in legal terms, one immediate possibility is to demand a legal framework for a specific sector similar to the existing sector-specific laws (and remedying some of their problems). The creation of Boards, registration and coordinated wage payments can form a space for long-term organising in a manner that existing labour laws largely

do not permit. The effort to fight for an effective Unorganised Sector Workers Bill aimed at doing this, but largely did not address the issues of migrant workers specifically. Attempting to do this on a sector-wise basis, and to specifically address the issues of migrant workers (such as through a universal registration system, separate seasonal representation on Boards for such workers, and grievance authorities accessible in both home and work areas), can be a potentially effective strategy.

Changes to Existing Laws

Certain features of existing laws - the Contract Labour Act, the ISMW Act and the Bonded Labour Act in particular - can be targeted with demands for amendments. One critical possibility would be a demand for making non-payment of wages a criminal offence under the ISMW and Contract Labour Acts, and to remove any requirement in all the labour laws for the sanction of the labour inspector before filing of complaints and initiation of prosecution. More broadly, rather than making removal of registration the main penal provision, strengthening the criminal prosecution sections of these laws and making them mandatory can also make them more useful for organising. Finally, there is a need to constitute separate authorities at the village, taluk and district levels for all these laws. These authorities could be in the form of separate Boards or Committees, similar to those in the sector-specific laws.

CONCLUSION

Organising migrant workers is a challenge that has confronted mass organisations and workers' movements for a long time. It is a challenge that increases in intensity with every passing day, in this time of extreme exploitation and repression of all workers in this country. We hope the summaries and suggestions made here will be of use to organisations that are part of the growing movement of

migrant workers in this country. If there ever was a time when such a movement was vital to the development and growth of all struggles for social justice in this country, that time is now.

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Society for Rural Urban and Tribal Initiative

Society for Rural Urban and Tribal Initiative is a non-profit organisation which supports People's Struggle and grassroots level development initiatives throughout India.

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Cover Design: Limited Colors

aakarbooks.com

ISBN: 978-93-5002-102-6

9 789350 021026

₹ 75

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