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EDITORIAL NOTE

God's Own Labourers : Assessing the Deprivation Status of Migrant Labourers in Kerala

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I. INTRODUCTION

Why should one be bothered about migrant labourers in Kerala? Well, if you are a Malayalee, the migrant labourer is the backbone of your state's economy.¹ A sizeable portion of the state's youth have themselves migrated outside the state² and the population left behind shuns blue-collar work.³ Migrant labourers form a considerable part of the workforce in a variety of sectors including construction, fishing, hotel industry, mining, and quarrying.⁴ Thus, as far as a

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¹ V.S. Deepika & Pushpa M. Savadatti, "Reasons for Extensive In-Migration in Kerala; A Study from the Employers' Perspective", 6(2) Indian Journal of Economics and Development 6 (February 2018).

² Arun Perumbilavil Anand, "Ageing Population and Replacement Migration: A Case Study of Kerala" 3 (Paper presented in the 28th International Population Conference of IUSSP to be held at Cape Town, South Africa, 29-10-2017 to 4-11-2017), available at <<https://iussp.confex.com/iussp/ipc2017/mediafile/Presentation/Paper7577/IUSSP%20Paper%20Final.pdf>> (Last visited on 24-10-2019).

³ *Supra* note 1, 5.

⁴ Centre for Migration and Inclusive Development, God's Own Workforce: Unravelling Labour Migration to Kerala 13 (27-10-2017), available at <<http://cmid.org.in/wp-content/uploads/2012/10/>

Malayalee is concerned, simple civility dictates that she understand the deprivation(s) faced by the migrant labourer and address them.

A non-Malayalee academic also has a number of reasons to draw her attention to the migrant labourer in Kerala. Firstly, as with most things in India, the mere size of the population being affected pokes at our humanity. Gulati Institute of Finance and Taxation extrapolated a survey of 16265 migrant labourers,⁵ to identify a formula for calculating migrant labour population; based on this formula, the present migrant population could be well over 36 Lakh people.⁶

Secondly, deprivation faced by migrant labourers within the confines of Kerala's boundaries has an additional dimension of trauma. While deprivation in itself is traumatic, it is exceptionally so when the vast majority of people surrounding you are incredibly well-off.⁷ Finally, present literature in this area is restricted to localised surveys. Thus, while there is sufficient empirical data, there is a dearth of literature that tries to explain the data using legal or other theoretical frameworks.

The present study analyses available empirical data, through the lens of the capabilities approach, to understand migrant labourers' deprivation in Kerala. There are two main parts to this paper. This first part tries to conceptualise deprivation for the purpose of this research paper. The second part applies the standard derived in the former part so as to analyse how migration has affected the deprivation status of the migrant labourer.

II. CONCEPTUALISING DEPRIVATION

During the past decades, scholars working in the field of impoverishment have provided a number of ways in which poverty/deprivation can be understood. The most widely used standard, especially by governments while designing policies, is the income standard of poverty.⁸ Here, people falling below a certain level of income are regarded as deprived.⁹ The biological standard replaces income with nutrients consumed as the deciding factor for deprivation.¹⁰ Both these standards

Gods-Own-Workforce-CMID-Web.pdf> (Last visited on 24-10-2019).

⁵ Gulati Institute of Finance and Taxation, Domestic Migrant Labour in Kerala, 11 (15-2-2013), available at <<https://drive.google.com/open?id=1htGI-R731zzbQifk1Td3BWKhFL6sUr>> (Last visited on 23-10-2019).

⁶ *Id.*, 12.

⁷ For general literature on deprivation through the lens of relative deprivation, see Walter Garrison Runciman, *Relative Deprivation and Social Justice* (1966).

⁸ Michael Forster & Horacio Levy, "The OECD Approach to Measure and Monitor Income Poverty Across Countries" 2 (United Nations Economic Commission for Europe Conference of European Statisticians, Working Paper 17, 25-11-2013), available at <https://www.unecce.org/file-admin/DAM/stats/documents/ece/ces/ge.15/2013/WP_17_OECD_D_En.pdf> (Last visited on 23-10-2019).

⁹ *Ibid.*

¹⁰ Amartya Sen, *Poverty and Famines: An Essay on Entitlement and Deprivation* 11-12 (1981).

are based on material factors; poverty can also be analysed via constructivist standards. To illustrate, the Relative Deprivation standard looks at deprivation relative to the society surrounding the deprived person.¹¹ Yet another example is the Social Exclusion standard which looks at the ability to participate in socially desirable activities as the measure of deprivation.¹²

This Note uses the Capabilities Approach to understand deprivation. The Capabilities Approach, posited by Dr. Amartya Sen, views deprivation as the limits on one's capabilities.¹³ Capabilities in turn are defined as the *freedom* available to individuals to perform the activities and enjoy the state of beings that they wish to.¹⁴ The Capabilities Approach has the benefit of being comprehensive enough to include all material factors such as income and nutrients supplied. This is because the ability to perform various activities are linked to an adequate supply of these material factors. Further, as opposed to purely constructivist standards, the Capabilities Approach allows us to measure deprivation.¹⁵ Measurement is important to understand and consequently tackle deprivation.

The claim that Capabilities Approach allows us to measure deprivation requires a slightly closer scrutiny. There are two main aspects here. First, Capabilities Approach defines deprivation in terms of freedoms available to people and *prima facie*, it is not possible to measure freedom as such. However, we can measure social and material factors that expand/curtail freedoms. To illustrate, while we cannot measure the freedom to exercise leisure, aspects such as work hours and availability of recreational areas can be measured. This allows us to have operational estimates of freedoms.

The second aspect is that it is not possible to conceive *all* freedoms in any operational set-up. Thus, it is an unspoken characteristic of the Capabilities Approach that for each study, only a list of freedoms can be assessed. We see this in all indices that have used Capabilities approach; examples include the Human Development Index and the Oxford Multi-Dimensionality Index for Measuring Poverty.¹⁶ Authors like Martha Nussbaum have also written in length about the

¹¹ Peter Townsend, *Poverty in the United Kingdom: A Survey of Household Resources and Standards of Living* 915 (1979).

¹² Amartya Sen, "Social Exclusion: Concept, Application, and Scrutiny" 26 (Office of Environment and Social Development Asian Development Bank, Social Development Papers No. 1, June 2000), available at <<https://www.adb.org/sites/default/files/publication/29778/social-exclusion.pdf>> (Last visited on 23-10-2019).

¹³ Amartya Sen, *The Idea of Justice* 254-257 (2009).

¹⁴ *Id.*, 231-232; Amartya Sen, *Development as Freedom* 87-90 (2000).

¹⁵ For various indices that used the capabilities approach to measure deprivation, *see*, e.g., United Nations Development Programme, Human Development Index (HDI), available at <<http://hdr.undp.org/en/content/human-development-index-hdi>> (Last visited on 24-10-2019); Oxford Poverty & Human Development Initiative, Global Multidimensional Poverty Index, available at <<https://ophi.org.uk/multidimensional-poverty-index/>> (Last visited on 24-10-2019).

¹⁶ *Ibid.*

conceptual reasons why having a list of capabilities is also fairer and more just in comparison to treating all freedoms equally.¹⁷

In lieu of this, this paper identifies the following capabilities for checking the deprivation status of migrant labourers in Kerala – 1) Free to be physically healthy, 2) Free to meaningfully engage in community life, 3) Freedom to live as part of a family, 4) Freedom in one's occupation, and 5) Freedom to engage in leisure. It is quite important to note that the paper does *not* claim in any manner that these are the only,¹⁸ or even the best possible, capabilities in which deprivation should generally be understood. The reason for choosing these particular capabilities is largely pragmatic. There is sufficient empirical data available to meaningfully engage with these five particular capabilities. As more data is collected, future works can engage with a larger set of capabilities. Having said that, I do believe that the presently identified capabilities successfully estimate, if not precisely calculate, deprivation.

Before concluding this section of the paper, it is meet to point out that the attempt here was not to hold that Capabilities Approach is the best method of calculating deprivation. Admittedly certain conceptions, especially the Social Exclusion theory, might be able to capture various aspects regarding migrant labourers¹⁹ that the Capabilities Approach leaves out. The purpose of this Section was to merely explain the conceptualisation of poverty used in the reminder of the paper and to mention my reasons for premising the study on the Capabilities Approach.

III. CAPTURING THE TREND OF DEPRIVATION

A. The Capability of Physical Health

One of the major problems faced by the migrant labour population is a lack of access to adequate housing.²⁰ The migrant labourer's house is almost always characterised with cramped living spaces, lack of access to clean drinking water, and unsanitary rest-rooms.²¹ Thus, their houses become literal breeding grounds for diseases.

¹⁷ Martha C. Nussbaum, "Capabilities as Fundamental Entitlements: Sen and Social Justice" in *Capabilities, Freedom, and Equality* 51-58 (2007).

¹⁸ Other relevant capabilities which may form a basis for assessment include sexual autonomy, property ownership, official documentation, political participation etcetera.

¹⁹ Social Exclusion Theory views deprivation as a measure of the inability to participate in activities that are priced as valuable in a society. This makes this approach an incredibly contextual approach. See generally Carl Ulrik Schierup, Karin Krifors & Zoran Slavnic, "Social Exclusion: Migration and Social Vulnerability" in *International Migration and Ethnic Relations* 200-226 (2015).

²⁰ Dilip Saikia, "Migrant Workers in Kerala: A Study on their Socio-Economic Conditions", 11(2) *Journal of Economic and Social Development* 29, 39-40 (December 2015).

²¹ *Ibid.*

Migrant labourers also have an increased vulnerability to sickness on account of the prevailing work culture in the state.²² In almost all sectors, the largest perquisite for employing a migrant labourer as far as the employer is concerned, is the immigrant's ignorance of labour laws.²³ The full ambit of this will be analysed in a later part of the paper. However, the lack of adequate safety equipment provided and routinely working over-time in physically taxing sectors such as the construction sector severely affects the migrant labourer's health.²⁴

The factors listed in the above paragraphs make access to health care all the more important for migrant labourers. Yet, a survey done of Tamil workers in Cochin reported that only 1/5th of the workers approached government hospitals as opposed to 1/3rd who approached private hospitals.²⁵ Many labourers end up leaving the disease untreated or treat them when they go back to their village.²⁶

Unfortunately, we do not have sufficient data to check other aspects of health care such as whether the nutritional needs of migrant labourer are being met. However, there is a cause for concern on this front as well. Available literature suggests that migrant labourers most often do not get Ration Cards at their place of stay.²⁷ This completely puts them outside the purview of food grain allocation under the Food Security Act in Kerala.²⁸ This in turn forced the labourers to rely on private consumption of nutrition. Kerala is a state with high cost price index in consumer goods; as such, there is always the risk that labourers would not buy sufficient nutrients if procurement is left completely from the private sector. While migrant labourers do make a decent amount of wage (especially in a relative scale from what they would have if not for migration), they prefer to send most of their earnings back home. Therefore, it is wrong to assume that migrants have the required purchasing power to completely fulfil their nutritional needs outside of the public distribution system.

Even if one were to disregard the countless moral reasons in favour of providing healthcare to an impoverished group, a healthy labour population is also vital to the state's economy. Perhaps the state government has recognised this

²² *Supra* note 4, 72.

²³ Jonathon W. Moses & S. Irudaya Rajan, "Labour Migration and Integration in Kerala", 19(1) Labour & Development 1, 14 (June 2012).

²⁴ Centre for Migration and Inclusive Development & Aajeevika Bureau, Labour Migration to Kerala: Challenges, Opportunities and Need for an Institutional Response 2-3 (December 2016), available at <<http://www.shram.org/uploadFiles/20170627122555.pdf>> (Last visited on 24-10-2019).

²⁵ Surabhi K.S. & N. Ajith Kumar, "Labour Migration to Kerala: A Study of Tamil Migrant Labourers in Kochi" 19 (Centre for Socio-Economic & Environmental Studies, Working Paper No. 16, October 2007), available at <<http://www.shram.org/uploadFiles/20121218074417.pdf>> (Last visited on 24-10-2019).

²⁶ *Supra* note 4, 80.

²⁷ *Supra* note 1, 2.

²⁸ Suneesh K.K., "Factors of Vulnerability among the Interstate Migrants in Kerala", 2(2) Pesquisa 15, 17 (May 2017), available at <<http://pesquisaonline.net/wp-content/uploads/2017/05/Pesquisaonline.net-Sunish-factors-of-vulnerability.pdf>> (Last visited on 24-10-2019).

because these issues are beginning to be addressed. Attacking the issue at its root, the government has started a scheme called 'Apna Ghar' which seeks to provide migrant labourers with houses that do not pose a health hazard.²⁹ Another scheme titled, 'Aawaz' is a state sponsored health insurance scheme specifically for migrant workers.³⁰ Till the March of 2018, two lakh workers were insured under Aawaz.³¹

Most of these schemes are still in the experimental phase. However, more than 2 to 3 years have passed since 'Apna Ghar' and 'Aawaz' were started. The need of the hour is to drastically increase the budgetary allocation and consequently scope of these schemes so that more people benefit from them.

B. Capability to Meaningfully Engagement in Community Life

While surveys have not specifically enquired whether migrant labourers enjoyed a good community life back in their homes, this can be positively gathered from various anecdotal evidence. Firstly, most migrant labourers come from village backgrounds which usually have close knit communities. Secondly and more importantly, we see that labourers even from far-away states Bihar always go home during their major festivals.³² This shows that they value time spent engaged in community activities, even enough to let go of weeks' worth of wages.

Meaningful engagement in social activities is the heftiest price that migrant labourers end up paying in exchange of making a livelihood. There is an omnipresent, omnipotent feeling of xenophobia that permeates the state's educated residents.³³ Migrant labourers, regardless of their ethnicity are stigmatized as job-stealers, violent, and unhygienic. The first manifestation of xenophobia is via a systemic exclusion in social functions. Kerala has certain social gatherings such as funerals and marriages where neighbours attend regardless of their religious beliefs. As a resident of Kerala, I can attest to it that migrant labourers are kept away from these gatherings. The message is clear, 'you are here to work for us and not work with us.' Such systemic exclusion from community activities and

²⁹ Bhavanam Foundation Kerala, Apna Ghar Projects, available at <<https://bfk.kerala.gov.in/apna-ghar-projects/>> (Last visited on 25-10-2019).

³⁰ Labour Commissionerate Government of Kerala, Government Order No. 1325/2016/LBR (27-10-2016), available at <<http://www.lc.kerala.gov.in/images/pdf/Report/Labour-Statistics-at-a-glance-Kerala-2017-1.pdf>> (Last visited on 25-10-2019).

³¹ Newsclick, Kerala Shows the Way by Embracing Migrant Workers, 25-4-2018, available at <<https://www.newsclick.in/kerala-shows-way-embracing-migrant-workers>> (Last visited on 25-10-2019).

³² LiveMint, The Great Migration, Kerala's Silent Revolution, 28-11-2018, available at <<https://www.livemint.com/Politics/B2krjrdQ1N149CvxtNApL/The-great-migration-Keralas-silent-revolution.html>> (Last visited on 25-10-2019).

³³ P.O. Martin, A Study of Human Rights Violations of Migrant Workers in Kerala (2011-2014), 2(2) Pesquisa 1, 2-3 (May 2017), available at <<http://pesquisaonline.net/wp-content/uploads/2017/05/Pesquisaonline.net-PO-Martin-HR-Violations-1.pdf>> (Last visited on 24-10-2019).

the consequent dehumanisation have huge repercussions on the mental health of the migrant labourers.³⁴

The second step in xenophobia is the active violence perpetrated against migrant labourers. Newspapers across the state often report incidents of migrant labourers getting beat up by locals and at times even murdered.³⁵ This violence is often justified by the natives as reaction to violent crimes committed by migrant labourers themselves.³⁶ Admittedly, there have been reports of crimes by migrant labourers.³⁷ However, a generic sense of acute xenophobia as a reaction to this punishes the entire group for the actions of few members. Further, the argument that a crime is justified as a reaction to another crime is premised on anarchy rather than rule of law.

While the situation is in fact bleak, there are attempts at positive changes by various civil society movements. An experimental scheme, 'Roshni' seeks to actively canvas migrant labourers to send their children to schools and ensure that schools are equipped to accommodate these children.³⁸ Yet another scheme, 'Changathi' aims to teach the migrants Malayalam to ease their social interaction in Kerala.³⁹ The situation can be further improved by building awareness on the blatant human right violations and pressuring governments to invest more in schemes that integrate migrant labourers into society.

C. Capability to Work

The single largest driving factor behind migration to Kerala is the high income that work here offers in comparison to other states.⁴⁰ There is a high demand of labour in the construction sector specially since the state is always

³⁴ The Kerala Institute of Labour and Employment (KILE), Psychological Problems of Migrant Labourers in Kerala: A Study in Thiruvananthapuram and Ernakulam Districts, 124-126 (2016), available at <<https://kile.kerala.gov.in/wp-content/uploads/2018/09/Sunilkumar.pdf>> (Last visited on 23-10-2019).

³⁵ The News Minute, Migrant Worker Dies in Kerala, Days After He was Attacked for "Stealing a Hen", 16-7-2018, available at <<https://www.thenewsminute.com/article/migrant-worker-dies-kerala-days-after-he-was-attacked-stealing-hen-84868>> (Last visited on 23-10-2019); FirstPost, Kerala Exodus: Migrant Workers Flee State as Rumours of Attacks Spread on Social Media, 10-10-2017, available at <<https://www.firstpost.com/india/kerala-exodus-migrant-workers-flee-state-as-rumours-of-attacks-spread-on-social-media-4129761.html>> (Last visited on 25-10-2019).

³⁶ See *Supra* note 5, 23.

³⁷ *The Economic Times*, Kerala's Relationship with Migrant Workers from Other States is Showing Signs of Strain, 16-8-2016, available at <<https://economictimes.indiatimes.com/news/politics-and-nation/keralas-relationship-with-migrant-workers-from-other-states-is-showing-signs-of-strain/articleshow/53715848.cms?from=mdr>> (Last visited on 25-10-2019).

³⁸ Kerala Government, Roshni, available at <<https://ernakulam.nic.in/roshini/>> (Last visited on 25-10-2019).

³⁹ Kerala State Literacy Mission Authority, Literacy Programme for Migrant Labourers (Changathi), 22-1-2018, available at <<https://literacymissionkerala.org/en/services/literacy-programme-for-migrant-labourers-changathi/>> (Last visited on 25-10-2019).

⁴⁰ See *supra* note 20, 38.

engaged in infrastructure development.⁴¹ Emigration from the state especially to the Middle East has resulted in a labour shortage to meet the requirements of the state.⁴² These factors naturally push wages up. Immigrants into the state were mostly unemployed before reaching the state or engaged in extremely unprofitable agricultural enterprises.⁴³ Thus, migration is often their access point into the capability to engage in employment. Considering the relatively high income they receive, most immigrants are grateful to the part migration played in their work life.⁴⁴

While recognising that migration helped bolster the migrant's capability to work, one should nevertheless be cautious to the adaptive preference at play here. The absence of opportunities in their former lives heavily influence the migrant's self-assessment of her situation.⁴⁵ An objective assessment of the ground level facts highlights a number of problems. Migrant labourers are discriminated on wage in comparison to a Malayalee worker.⁴⁶ They are forced to work over-time routinely with no additional compensation.⁴⁷ There are also reports of adequate safety equipment not being provided.⁴⁸

Most of these problems arise due to non-implementation of existing labour laws and social security laws. Since an analysis of all applicable labour laws are not possible within the scope of this paper,⁴⁹ the paper addresses the two most overtly relevant laws - the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, and the Contract Labour (Regulation and Abolition) Act, 1970.

The Contract Labour Act provides for licensing of both establishments using contract labour⁵⁰ as well as suppliers who supply the labour.⁵¹ The Act also contains provisions for various welfare measures such as canteens,⁵²

⁴¹ Centre for Migration and Inclusive Development, Construction, 2 (June 2017), available at <<http://cmid.org.in/wp-content/uploads/2012/10/Construction-Migration-Sector-Brief-LR-CMID.pdf>> (Last visited on 24-10-2019).

⁴² *Supra* note 2, 3.

⁴³ Arun P.A. & Ajay P.A., Migrant Labour in Kerala: A Study on Interstate Migrant Workers, 2(2) *Pesquisa* 45, 48 (May 2017), available at <<http://pesquisaonline.net/wp-content/uploads/2017/05/Pesquisaonline.net-Arun-Migrant-labor-in-Kerala.pdf>> (Last visited on 24-10-2019).

⁴⁴ *Id.*, 50.

⁴⁵ Asha Elizabeth Thomas, Labour Migration in Kerala: A Study on Working Conditions of Unskilled Labourers, 6(10) *International Journal of Exclusive Management Research* 5 (October 2016), available at <<http://ijemr.in/wp-content/uploads/2018/01/Labour-Migration-in-Kerala-A-Study-on-Working-Conditions-of-Unskilled-Labourers.pdf>> (Last visited on 24-10-2019).

⁴⁶ *Supra* note 41, 3.

⁴⁷ *Supra* note 45, 5.

⁴⁸ *Supra* note 24, 2-3.

⁴⁹ For the applicability of other social security laws on contract labour, see H.S. Pandey, "Contract Labour and Social Security Legislation in India", 36(2) *Journal of the Indian Law Institute* 193 (April-June 1994), available at <<https://www.jstor.org/stable/43951531>> (Last visited on 21-10-2019).

⁵⁰ The Contract Labour (Regulation and Abolition) Act, 1970, S. 7.

⁵¹ *Id.*, S. 12.

⁵² *Id.*, S. 16.

restrooms,⁵³ and first aid facilities⁵⁴ and delineates responsibility for these⁵⁵ as well as payment of wages⁵⁶ between the principal employer and the contract labourer. The Act also envisages periodic inspections to ensure that the provisions of the Act are complied with.⁵⁷ The Inter-State Migrant Workmen Act, in addition to the above stipulations,⁵⁸ also provide for displacement allowance⁵⁹ and journey allowance.⁶⁰ The Supreme Court has also elevated these rights to the status of Constitutional Rights by recognising them as facets of human dignity protected by Article 21 of the Constitution.⁶¹

Both these legislations seem to be adequate on paper to deal with most of work-related problems that plague migrant labourers.⁶² However, ground realities suggest differently. The main problem with the Acts is its necessary precondition of existence of a tri-partite relation between a principal, a contractor, and the labourer.⁶³ Empirical data suggests that only 66% of migrant labourers are employed via contractors.⁶⁴ The rest are casual labourers who aggregate in collection points at dawn, are hired by employers on day to day bases, and are paid daily wages.⁶⁵ Thus, these labourers are even on paper excluded by both the Contract Labour Act as well as the Migrant Workmen Act.

The situation of the 66% contract labourers are not much better off either. There is a vast amount of literature available that discusses the highly limited implementation of the Contract Labour Act throughout India.⁶⁶ A large chunk of this non-implementation is on account of structural problems with the Act itself. For example, the Act fails to give a cause of action to the workers when the Principal employer or the Contractor fails to perform their statutory obligations.⁶⁷

⁵³ *Id.*, S. 17.

⁵⁴ *Id.*, S. 19.

⁵⁵ *Id.*, S. 20.

⁵⁶ *Id.*, S. 21.

⁵⁷ *Id.*, S. 28.

⁵⁸ The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, Ss. 4, 8, 12, 16-18, 20.

⁵⁹ *Id.*, S. 14.

⁶⁰ *Id.*, S. 15.

⁶¹ *People's Union for Democratic Rights v. Union of India*, (1982) 3 SCC 235, 252.

⁶² See E. Epstein & J. Monat, "Labour Contracting and its Regulation: II", 107(6) International Labour Review 513, 519 (June 1973).

⁶³ *Id.*, 454-455.

⁶⁴ *Supra* note 5, 15.

⁶⁵ *Supra* note 41, 3.

⁶⁶ Irfan Ahmad Sofi et al., "Labour Market Regulations and In-formalisation of Migrant Worker: Evidence from Indian Manufacturing Sector", 7(2) Asian Journal of Law and Economics 169, 194 (August 2016); Irfan Ahmad Sofi & Mohd Hussain Kunroo, "Demand Shocks and Employment Adjustments: Does Employment Protection Legislation Create Rigidity?", 157(3) International Labour Review 461, 464 (2018); Anamitra Roychowdhury, "Effectiveness of Trade Unionism in a Globalised World: The India Case", 45(7/8) Social Scientist 7, 14 (July-August 2017), available at <<https://www.jstor.org/stable/26380414>> (Last visited on 21-10-2019).

⁶⁷ Pankaj Kumar, "A Structural Analysis of Indian Contract Labor Laws", 49(2) Indian Journal of Industrial Relations 185, 188 (2013), available at <<https://www.jstor.org/stable/24546948>> (Last

Even if proceedings are initiated, the penalty prescribed under the Act is meagre and does not deter violators.⁶⁸ One factor that used to sufficiently deter detractors was the judicial reasoning that employers should automatically absorb any labour force that was hired in contravention to the provisions of the Act.⁶⁹ This gave labourers the benefit of labour protection and gave employers the plight of increased costs of labour law compliance for a larger set of employees should they violate the Act. However, in *SAIL. v. National Union Waterfront Workers*⁷⁰ the Supreme Court of India overruled this position to say that even if contract labourers are employed in contravention of the Act, they do not have a right of automatic absorption. Scholars opine that this has contributed massively to increased use of contract labourers in contravention of the Act.⁷¹

The Third Report of the Administrative Reforms Commission submitted to the Kerala State Government highlights equally disheartening observations with respect to the Migrant Workmen Act as well. The report notes that in 2016-17, there were a total of 5560 migrant workers registered under the Act in Kerala.⁷² This is abysmally low in comparison to the total population of workers which is estimated well above 25 Lakhs for this time period.⁷³ Similar under-registration was noted for both contractors as well as establishments using migrant labourers.⁷⁴ The report also noted that the quantity and quality of inspections are severely under par.⁷⁵

D. Capability of Engaging in Family Life and Capability to Enjoy Leisure

There is an absence of direct empirical data on the families of labourers before migration or their avenues for leisure. However, the anecdotal evidences argued in the case of community life apply here also to suggest that

visited on 21-10-2019).

⁶⁸ Gurbir Singh, "Legal Setback for Contract Labour", 27(14) Economic and Political Weekly 689 (4-4-1992), available at <<https://www.jstor.org/stable/4397756>> (Last visited on 21-10-2019).

⁶⁹ *Air India Statutory Corp'n. v. United Labour Union*, (1997) 9 SCC 377 : 1997 LLR 288.

⁷⁰ *SAIL v. National Union Waterfront Workers*, (2001) 7 SCC 1.

⁷¹ Suresh C. Srivastava, "Impact of the Supreme Court Decision on Contract Labour: (*Steel Authority of India Ltd. v. National Union Water Front Workers*)", 43(4) Journal of the Indian Law Institute 531, 531 (October-December 2001), available at <<https://www.jstor.org/stable/43953398>> (Last visited on 21-10-2019); Vidu Badigannavar & John Kelly, "Do Labour Laws Protect Labour in India? Union Experiences of Workplace Employment Regulations in Maharashtra, India", 41(4) Industrial Law Journal 439, 463 (December 2012); N.I.R. Budhe, "Contract Labour Act: An Instrument of Exploitation?", 28(1/2) Economic and Political Weekly 23, 23-24 (2-1-1993 to 9-1-1993), available at <<https://www.jstor.org/stable/4399273>> (Last visited on 21-10-2019).

⁷² Administrative Reforms Commission, Welfare to Rights Implementation of Select Legislations a Review, p. 103, S. 6.3.2 (October, 2018), available at <<https://www.arc.kerala.gov.in/sites/default/files/inline-files/ARC-3rd%20Report-%20Report%203%20-%20Welfare%20to%20Rights.pdf>> (Last visited on 23-10-2019).

⁷³ *Supra* note 5, 12.

⁷⁴ *Supra* note 72, p. 104, S. 6.3.2.

⁷⁵ *Id.*, 105.

migrant labourers had considerable familial ties and opportunities for leisure pre-migration.

None of the surveys encountered by the author specifically address the question of opportunity for leisure in Kerala. Therefore, yet again we are forced to rely on indirect factors to make an assessment of the same. We know from our analysis in the previous parts that migrant labourers are discriminated against by Malayalees, work over-time, and live in cramped spaces. Each of these seems detrimental to recreational activities.⁷⁶

Further, ironically migrant labourers lack the disposable income to engage in recreational activities considering the high cost of living in Kerala. This might seem contradictory to the relatively high income that they receive. However, most labourers migrate to save up wealth for their families back home and eventually go back to their villages.⁷⁷ Thus, they remit most of the money they receive back to their ancestral homes and live frugally in their workplaces.⁷⁸

Families and recreation have been included in the same head in this paper because they can both be enhanced by proper implementation of measures suggested earlier in the paper. The social integration provided by schemes like 'Changathi' and 'Roshni', greater healthcare, more regularised work hours, and proper housing are all factors that positively influence capacity for leisure as well as act as an access point that incentivises migrant labourers to raise their kids within the state.

Investing in the capability to engage in families also has an inbuilt feedback mechanism to further improve social integration. The main reason for the existing xenophobia in Kerala is perceived violent tendencies on part of the migrant population.⁷⁹ Families have a rather large impact on this perception as they are seen as more docile than adult single males. This is a feedback mechanism because the resulting greater social integration gives confidence to more labourers to start families here which again reduces the threat perception.

Lack of families and recreation are aspects that often pale in the policy maker's eye in comparison to other factors like job security and physical health. However, a study sponsored by the Kerala Institute of Labour and Employment considered these aspects *inter alia* to find that migrant labourers suffer from a number of psychological problems including emotional deprivation, stress, anxiety, and depression.⁸⁰ Thus, addressing the capabilities of family and recreation are highly significant to the welfare of the migrant labourer.

⁷⁶ *Supra* note 5, 27-28.

⁷⁷ *Id.*, 26.

⁷⁸ *Supra* note 25, 12.

⁷⁹ *Supra* note 5, 29.

⁸⁰ *Supra* note 34, 124-126.

IV. CONCLUSION

The Kerala State Government formulated the Kerala Inter-State Migrant Welfare Scheme in 2008. Presently, the scheme is operated by the Kerala Building and Other Construction Workers Welfare Board. This Board, as its name suggests is not specialised to migrant worker welfare. Consequently, the scheme is perpetually understaffed and fails in many of its endeavours.⁸¹

From a purview of the existing literature, it is this author's understanding that the single largest impetus to further migrant labour welfare would be to have a single body which is specifically tasked for this purpose. This can be done by formulating an independent body for the Kerala Inter-State Migrant Welfare Scheme. Further, there should be Kiosks at railways stations, major bus stands etcetera where migrant labourers can get registered under the Welfare Scheme and avail of ration cards in addition to other valid documents. The register would then aid in furthering schemes like Roshni, Apna Ghar, and Changathi which can be brought within the umbrella of the Scheme and provided adequate funding. The Scheme can also conduct awareness campaigns among employees sensitizing them of their rights in labour law.

Admittedly, the issues with the Contract Labour Act and the Interstate Migrant Workmen Act cannot be solved via the above recommendations. However, as mentioned previously, these issues and its possible solutions have already been debated extensively in academia. Thus, the problem plaguing the legislations is not an absence of ideas but an absence of political will.

The paper concludes with reproducing the following quote by Honourable Justice K. Vinod Chandran. This also answers in part the question the question posed in the beginning of the paper, as to why one should be bothered about migrant labourers in Kerala.

*"An enlightened society has to take steps to assimilate the migrant population into their adopted community, instilling in them a feeling of oneness, so that they can work together towards regional aspiration and development. Isolating some and treating them as second class citizens can only lead to backlash by way of crimes against civil society and result in deleterious consequences of widespread public harm and injury, including spread of epidemics."*⁸²

⁸¹ *Supra* note 72, p. 98, S. 6.2.2.

⁸² *M.A. Jose v. Vadavukodu Puthencruz Grama Panchayath*, WP(C) No. 31925 of 2015 p. 17, ¶17 decided on 17-6-2016 (Ker).