

Employment Through License Agreements-Demeaning the Worker's Right to Life & Scorning the Constitutional Goals: An Analysis in Relation to the Indian Railway Licensed Sahayaks (Porters)

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ARTICLE INFO

ABSTRACT

Received: 15 Apr 2025

Revised: 18 Apr 2025

Accepted: 24 Apr 2025

In view of the liberalization in 1991, India's economy has been experiencing economic growth but regrettably is not accessible to everyone since the increased population is leading to unemployment, helplessness, dissimilarity and marginalization (Municken 1999-1)¹. The situation is same even today where around 4800 lakh young adults between 15 and 34 years of age, though having higher literacy levels, could not find helpful jobs² thus are forced to join unsuitable avocations like licensed porter in Indian Railways due to dire economic necessities. Various studies indicate that the working condition of these laborers is pathetic as they are mostly referred to as 'coolies' or 'sahayaks'³ but unconsidered to be 'workmen', and are therefore denied for social security benefits as are granted to their counterparts. As this situation is becoming a serious social concern infringing the aim of the Indian Constitution securing a just and social order, it has become the basis of this study conducted in relation to the work status of the Indian Railways Licensed Sahayaks (IRLSs) that occupies a large employment sector, which concluded that the employment through license agreements demeans the living status of workers, and needs to be reviewed by the State as it voids the settled law.

Keywords: Unemployment, Helplessness, Marginalization, Coolies, Licensed Sahayaks

I. Preface

The Indian Railways with a huge network all over India, works under a single administration for transportation of passengers and cargo, competes not only with road transport at national level but also with other railway networks

¹ Dennis Weitering and Gerben Nooteboom, "Railway Porters of Mumbai: Social Capital in Practice", *EPW* (2004) Vol. 39 (22) pp 2243-2250.

² Washington Post, "India's railway network receives 19m applications for 63,000 jobs as porters, cleaners and track maintainers", *Independent* (Jan. 06, 2019).

³ Jason Rodrigues, "Indian railway 'coolies' to be renamed in bid to improve their status", *The Guardian*(Mar. 02, 2016).

at international level, and thus occupies a prime place in the means of transport across the world⁴. It is considered as one of the outsized employment sources, major economic resource and progress locomotive of the nation.

Because of its significance in the transport world, the Indian Railways has been imposed with a statutory duty to provide human resources adequate to extend assistance to its passengers in carriage of their luggage, as well as to handle cargo held under its safe custody, that forces it to employ laborers in bulk to work around the clock. Undoubtedly, the Railways with the services of the licensed porters is assuring its customers who are its passengers, of their best services that the travelers can perform journey with a peaceful mind knowing that their luggage is in the competent hands of trusted and skilful workers⁵, thereby gaining and improving its economic resources largely. However, the work conditions of these porters whose number is wide and whose service is vital in the railway employment arrangement are feeble as can be seen from media publications of their constant resistance since long for work and social protection⁶.

An IRLS is a laborer who is not paid by either principal employer or any contractor unlike other worker employed and is controlled, but works for the principal employer as employed and is controlled by him/her. He/she is the one who is engaged by railways under a license to fulfill the obligation of the railways even at risk, to handle its passengers' luggage carefully in its premises, but is strained to sustain a livelihood and elevate his/her dependents for an improved life out of clemency of the railway passengers. He/she is the one who is not even to be recognized as holding an employee relationship with either his employer or with its passenger though performs work for both.

The IRLSs are demanding for recognition as 4th class employees, and allowing them for work and social security as that are applicable to their counterparts⁷ claiming that their nature of work is similar. They have also concern about the disabled and old aged passengers' use of Battery Operated Vehicles (BOVs) free of cost for carriage of luggage contributed by Corporate Social Responsibility (CSR), Commercial Publicity and Chargeable Routes, reporting that it is affecting their livelihood severely⁸. Besides, researchers observe that most of such porters are suffering from work-related illness as affected to muscular skeletal disorders (MSDs)⁹ but the social security coverage is meager. Furthermore, these laborers and/or dependents are neglected to be compensated suitably by the employers in case of work injury, work disablement or death while in work at the workplace due to lack of definite law, unlike other regular workers. The IRLSs are also worried of about their disability and old age life protection in the absence of health insurance, gratuity and pension, and reported that they are direly neglected for many decades, and mere calling them as 'sahayaks' instead of 'coolies' would not give them any social protection¹⁰ and could not provide them a meaningful life.

The Contract Labor (Regulation & Abolition) Act 1970 specifically mandates that if the work is not seasonal or intermittent or casual, the workers are to be appointed on permanent basis with adequate work and social protection from the employer not only for self but also for their dependents. But alas the IRLSs are engaged through license agreements in a perennial nature of 24x7x365 operation system undertaking transfer of passengers, their luggage and such other cargo activities, without having any work and social protection except scanty sustenance allowance received as 'coolie' or 'portage' or 'portage' charges from the passengers at the rates fixed by the employer.

Need of the study

⁴ Work Study Report on Review of Parcel Porters, Northern Railway (No. 16-CP/14/WS/2020-21).

⁵ Press Release: Eastern railways Licensed Porters - Your Trusted Travel Companions (Oct. 09, 2013), available on Eastern Railway website.

⁶ Harish Monga, "Coolies demand employment in Railways under Group D", *Babushah* (Feb 28, 2018).

⁷ Abhinav Rajput, "Coolie or Sahayak, not much in name: Porters demand railway jobs", *Hindustan Times I* (Feb. 26, 2016).

⁸ Letter No. 2024/TG-II/1010/15/NR dated 10/08/2021 of the Director Traffic Commercial (General) Railway Board to the Director/Establishment (N) of Railway Board.

⁹ Ekta Melkani, et al., "WRMSD Related to Manual Material Handling of Indian Railway Porters", *International Journal of Current Microbiology and Applied Sciences* (2020) 9 (4): 2488-2493.

¹⁰ Manav Mander, "Training in soft skills of no help, say 'sahayaks'", *The Tribune News Service* (Feb. 28, 2016).

(i) Since the Constitution of India guarantees a *right to life* (in which a *right to work* and *decent living standard* are integral parts) to every citizen to which the IRLS is not an exception, (ii) because the CLRA Act mandates appointment of workers on permanent basis if the nature of work is perennial in every establishment to which the Railways is not exempted, and (iii) as the 'State' is under strict obligation to secure enhanced status of living for every citizen whereas in this specific instance the Indian Railways which is a State-owned establishment has been preferring a large scale employment depriving the livelihood of laborers - it is necessitated to study the work conditions of these licensed workers whose living status is far below to the living standard, to highlight the State's responsibility which is expected to act as a model employer to look after the wellbeing of the laborers engaged through whatever means in fulfilling of their statutory duty, that too when engaged in public service, for which these researchers have attempted to, to make suggestions accordingly.

II. METHODOLOGY

Primary data was collected using online sources, publications, policy documents and judiciary decisions. The secondary data was collected through personal interviews of 41 porters working in various railway stations in Hyderabad and Secunderabad of Telangana State, India to know their status of living.

III. REVIEW OF LITERATURE

A. Principles governing the engagement of RLSs

The recruitment of licensed sahayaks is mainly based on the transfer of badges. If a sahayak is found physically unfit to work, his/her badge is surrendered and transferred to his/her spouse or nominee declared through an affidavit before the Judicial Magistrate, and whose antecedents is verified and whose fitness is certified by authorized officers. The unfit sahayak will become the dependent of the new sahayak¹¹.

The other method is through notification of vacancies where the selection is through a duly constituted Selection Committee comprising two Junior Scale Officers which will assess the antecedents, physical fitness and suitability of the candidates¹². The researchers have measured a notification¹³ issued by the Northeast Frontier Railway (NRF) in the year 2019 as available on the web to better understand the nature of work, work conditions and the privileges granted to the IRLSs, and to appropriately address the problem. The summary of the principles governing the engagement of IRLSs is given hereunder:

- 1) The IRLS is not entitled to claim for any regular employment;
- 2) The Railways is empowered to revoke the license if situation warrants;
- 3) The IRLS should work under the direct control of the railway administration and shall adhere to all the orders in relation to handling of baggage of passengers;
- 4) The IRLS should discharge duties as allocated in the duty roster by the railway authorities;
- 5) The IRLS shall not collect the portage charges from the passengers for luggage beyond the rates prescribed by the railway administration. 40kg head load is considered as one trip full load;
- 6) The IRLS shall have to pay the monthly license fee to the railway administration on or before 10th of every month to cover supervision expenses and uniform cost; If the IRLS procures uniforms themselves as per the standard fixed by the railway administration, they need to pay license fee to cover supervision charges only;
- 7) The license can be suspended for 15 days or cancelled on the grounds of misconduct, collecting of more charges than the prescribed rates, rough handling of luggage, unauthorized absence from duty, disobeying the orders of authorities, conviction by a court of law, fraudulent use of medical card or the complimentary card or PTO;
- 8) The IRLS is entitled to be given reasonable opportunity of being heard in case the authority decides for suspension or cancellation of license. The IRLS is entitled to be issued with a written memo for explanation; and

¹¹ Varupi Jain, "A burdensome livelihood", *India Together* (Feb. 01, 2004).

¹² Commercial Circular No. 109/2006, No. 2006/TGII/1010/48/Policy/LP dated 22/12/2006 of the Director, Traffic Commercial (G), Railway Board.

¹³ Notification No. C/L-Porter/Engagement/13, dated May 23, 2019 of the N.F. Railways.

- 9) The IRLS is entitled to appeal to the designated appellate authority against the order of suspension or cancellation of his/her license, whose decision will be the binding factor as final.
- 10) The IRLS is to deposit a refundable security amount against the badge and buckles provided to him/her. He/she has to bear the expenses involved in case of replacement or repair;
- 11) The IRLS shall wear uniform, badge and buckle while in work; and
- 12) The IRLS is entitled to:
 - a) Free outdoor treatment for self, spouse and dependent kids at the Railway Hospital if available at the Railway Station;
 - b) Casual Leave at the discretion of the railway station administration;
 - c) Free use of railway property i.e. light trolleys and hand barrows for carriage of baggage of passengers;
 - d) Free use of railway amenities like rest rooms, waiting halls, canteens etc. that are available for II-class passengers. If special amenities are available, they can use but in that case they should not use the amenities meant for the passengers;
 - e) Free education facilities like Railway Schools etc. for the education of their children subject to availability of seats upon preference of wards of railway employees;
 - f) One to-and-fro travel Complimentary Cheque Pass in II/SL class for self and spouse which is valid for 5 months for one journey per year from workstation to any other station;
 - g) One PTO in II/SL every year for self and spouse with validity of 5 months for travel from workstation to any other station and return to workstation;
 - h) Two red shirts in summer annually, and one woolen shirt during winter season once in 2 years in lieu of 1 red shirt if the workstation is a cold region, and other than cold regions, one tricots shirt in two years in lieu of 1 red shirt;

B. Evolution of the IRLSs

The researchers have reviewed online literature to showcase the evolution of IRLSs, and observed as below:

Every IRLS was initially entitled to only a Complimentary Cheque Travel Pass (CCTP) for self from workstation to any other station in II/SL class¹⁴, one set of Privilege Ticket Order (PTO) for to-and-fro-travel of self and life-partner from workplace to any station¹⁵, medical facilities for out-door treatment (excluding routine lab and x-ray exam charges¹⁶) of self, life-partner and other dependent kids at Railway sickbay if exists at the workstation, children education in railway educational institutes if exist in the workstation on availability of vacancies after preference given to the wards of railway employees, two sets of uniform, casual leave at the discretion of the employer, free use of trolleys and hand barrows for carrying luggage, free use of rest rooms, canteens and waiting halls¹⁷.

Gradually with advancement of the unions, the extent of benefits has been increased in view of Government of India's recognition that the Sahayaks are the integral part of Indian Railways linking it with passengers and are serving round-the-clock. The CCTP benefit has been extended to spouse¹⁸. The set of uniform has been changed to three red shirts and one woolen shirt annually. The PTOs for self and spouse have been increased to two from one, with 5 months validity. The validity of the CCTP for self and spouse has been extended to 5 months similar to the railway workers¹⁹. The rest rooms are equipped with pure drinking water supply and barrack beds in addition to

¹⁴ Letter No. E(W)96PS5-6/58 dated Jul. 07, 1997 of the Dy. Director Estt. (Welfare), Railway Board (RBE No.97/97).

¹⁵ Letter No. E(W)96PS5-6/58 dated Mar. 17, 1999 of the Dy. Director Estt. (Welfare), Railway Board to the General Managers (RBE No.55/99).

¹⁶ Railway Establishment Rules, available at: https://digitalscr.in/bzadiv/circulars/misc_circulars/uploads/Railways%20Establishment%20Rules.pdf (last visited on: Jun. 09, 2024).

¹⁷ Kumar Gaurav and Mayank Singhal, "Licensing and Livelihood: Railway Coolies", *Centre for Civil Society*.

¹⁸ Letter No. E(W) 2004 PS 5-6/74 dated Sep. 01, 2004 of the Desk Officer Estt. (Welfare) Railway Board.

¹⁹ Letter No. E(W)2019/PS5-6/6 dated Mar. 08, 2019 of the Dy. Director Estt. (Welfare)-I, Railway Board to the general Managers(P), All Zonal Railways & PUs (RBE No.43/2019).

providing entertainment facilities for spending leisure time pleasantly. Pathways are constructed for smooth movement of trolleys and hand barrows to which they are entitled to use. Besides, their children education facility has been extended to the schools administered by the Railways, Railwaymen's Organizations, and Mahila Samitis that may be available at any station in the division in which ambit the Sahayaks are working^{20,21}.

The IRLSs are observed as subjected to musculoskeletal disorders affecting their collarbone, lower back, shoulder, lap and ankle because of their regularly carrying weighty loads and embracing uncomfortable postures which can harm their physical well-being²². Therefore, they are granted entitlement to self for free medical assistance and healing facilities as indoor patient (excluding diet) in Railway Hospitals in case of sustaining serious injuries while in work subject to certification by the concerned railway authorities. They are also made entitled to be provided with a free pass for travel to the hospital²³.

Further, the medical benefits have been extended to the effect that the RLSs and their family members can be referred to other Railway Health Units or Railway Hospitals on par with the railway employees and their family members, excluding the empanelled private hospitals subject to that they are uncovered by the Ayushman Bharat Pradhan Mantri Jan Arogya Yojana²⁴.

A woman candidate who carries pregnancy is deemed as unfit to work as porters temporarily, but will be eligible at a later date after being certified by a Govt. Doctor as fit to carry heavy loads. A woman licensed porters is not covered by maternity relief law. Similarly, a woman if is in family way, she is barred from working during the period till the Govt. Doctor certifies her fitness for lifting of heavy loads at a later date²⁵.

The son/ daughter or adopted son/ daughter or spouse or nearest relative inclusive of brother or brother's son or wife of brother of the deceased or medically unfit licensed porter is made entitled to be transferred the badge²⁶.

A Licensed Porter is different from a Parcel Porter as both are diverse entities with unique definitions of employment. The licensed porter is to discharge loading and unloading work and additionally to handle luggage of passengers, whereas the parcel porter is to load or unload of parcels which are booked in advance by traders. The licensed porter will get livelihood from the railway passengers carrying nearly 22 coaches in a train whereas the parcel porter is entrusted with only 2 brake-vans (one in front and the second one is in rear of a coach) of each train. Hence, the nature of duties is dissimilar²⁷.

C. Study of Judiciary Findings

The researchers have made a study as to how the Judiciary has interpreted the provisions of labor laws and its findings in various cases that impact the evolution of the licensed porters, some of which are briefed below:

1) The Kerala High Court in *Narayanan v. Southern Railway* (Sep 1979) case held that non-inclusion in Schedule-II does not entitle a 'porter' from being a 'workman' under Sec. 2 (n)(i) of the Workmen Compensation Act 1923 (WC Act). It viewed that the relation between the railways and the porter is to be deemed as employer-employee relation since the railways in order discharging its statutory duty to arrange assistance to its passengers in regulating luggage, engages and controls the work of the porters directly. In addition to handling of the luggage of

²⁰ Indian Railways announces Several Welfare Measures for Sahayaks/License Porters" PIB, Ministry of Railways (Mar. 07, 2019).

²¹ Pallavi Patnak, "Medical facilities to licensed coolies at par with Railway employees", *Shiksha* (Apr. 02, 2022).

²² Mohammed Rajik Khan and Nishant Kumar Singh, "Prevalence of musculoskeletal disorders among Indian railway sahayaks", *International Journal of Occupational and Environmental Health* (2018), 24 (1-2): 27-37.

²³ Sub Section (17) Licensed Porters, Medical Attendance and Treatment, available at: <https://indianrailways.gov.in/railwayboard/uploads/directorate/health/downloads/IRMM/Chapter6.pdf> (last visited on: Jun. 09, 2024).

²⁴ Letter No. 2018/H-1/2/9/Licensed Porter dated Mar. 03, 2019 of Executive Director Health (G), Railway Board.

²⁵ Commercial Circular No. 58 issued vide Circular No.2009/TG-II/1010/39 dated Oct. 16, 2009 of the Railway Board.

²⁶ Commercial Circular No. 62/2009 issued vide Circular No.2009/TG-II/1010/59 dated Oct. 29, 2009 of the Railway Board.

²⁷ Lok Sabha Unstarred Question No.1876 answered on Mar. 09, 2016.

passengers, the licensed porter is also to handle diligently the parcels and luggage held by the railways in its custody. He is to work as per the rosters and coolie rates fixed by railways. He/she is provided with uniforms, badges, buckles and free medicinal treatment as outpatient in the railway sickbays. He/she is under the punitive power of railways and is liable to suspension for misbehavior, defiance, incompetent functioning etc as is applicable to other workforce of the railways, which justifies considering a 'porter' as a 'railway employee' under the WC Act.

2) The Supreme Court in *Miss A. Sundarambal v. Govt of Goa, Daman and Diu & Others* case in 1988 outlooks that a 'workman' is a person employed in any industry to carryout skilled or unskilled, manual or clerical work for hire or reward. Therefore, doing manual or clerical work was necessary for considering as workman. The designation is not important but the nature of work is important. If the nature of the work is manual or clerical, then he/she should be held to be a workman under the ID Act²⁸.

3) The Andhra Pradesh High Court in *Divisional Railway Manager, SCR, Vijayawada v. Labor Enforcement Officer (Central), Rajahmundry*²⁹ case held that the licensed porters engaged in the Railway Parcel Offices are entitled to a minimum wage as prescribed by the Minimum Wages Act 1948 (MW Act) by considering the fact that the services of the porters are engaged for more than 9 hours per day on rotation basis, and that the full time employment (FTE) cannot be converted into a part-time job by reducing the working hours to 4 per day as decided in *B Ramulu and Others v. Union of India*³⁰ case, and that the porters are entitled to be covered by the MW Act on per-day basis even though they may not be regular employees of the Railways as decided by the Supreme Court in the SLP No. 2963/1997. The Court has also observed that Section 2(i) of the MW Act includes every person who is hired or rewarded to do any work either skilled or unskilled, either manual or clerical, including any outworker to whom any material is given out by other individual for business activities of that individual.

4) The Calcutta High Court in case of *Union Of India And Others v. Ram Chandra Tanti And Others*³¹ in 2004 while affirming the decision of the Calcutta Tribunal made significant observations and decisions, the summary of which is given below to understand the nature and entitlement of the licensed porters:

(a) The nature of appointment in relation to the porters licensed for carrying luggage of the passengers on platforms is dissimilar to the porters licensed for handling parcel service in parcel yards.

(b) Railways appoint two types of licensed porters, one set is to carry passengers' luggage and the other set is to handle goods and parcels entrusted to the railways. The first set of porters who are engaged in carrying passengers' luggage work can also choose the work of handling railway parcels and goods on surrendering their licenses.

(c) The porters licensed to handling parcel work in parcel yards are sometimes engaged through contractors/cooperatives. These porters shall be deemed as licensed parcel porters but not licensed passengers' porters. They are entitled to be absorbed into regular stream since their nature of work is found perennial on creation of adequate number of positions, if they are physically fit and did not complete the age of superannuation. They are eligible for the benefits on par with other regularly appointed railway parcel porters from the date of absorption. The absorbed parcel porters shall also have to perform the manual work depending on the requirements of the railways. The unabsorbed porters are entitled to be continued to work on casual basis as per the requirement of the railways in preference to the other licensed workers who perform the passengers' luggage handling work.

(d) The licensed porters who are engaged solely for the purpose of carrying luggage of passengers and are paid by the passengers are also entitled to handle parcel work too. In such cases, they are entitled to remuneration at mutually agreed rates for handling parcel job.

5) The Central Administrative Tribunal, Hyderabad in *A Appala Naidu and Others v. The Chairman, Railway Board*³² case in 2004 held that the licensed porters are not entitled to be regularized of their services by creation of

²⁸ JT 1987 (2) 101

²⁹ 1998(1)ALT40.

³⁰ WP No. 13364/1994.

³¹ 2004 (3) CHN 11, (2005) ILLJ1 62 CAL.

³² 2005 (2) SLJ 84 (CAT).

regular positions because there is no employer and employee relationship between the Railways and licensed porters. It has viewed that the licensed porters are not employed either as contract laborers or by any other means but were engaged through licenses for carrying luggage of railway passengers, and were paid per-hour-wages for handling railway parcels at the rates prescribed by the local government for the other unskilled workers.

6) The Madras High Court in *Southern Railway License Porters Union v. Union of India*³³ observed that most of the licensed porters belong to vulnerable communities of the society, and that therefore it is the bounden duty of the Government to secure them adequate means of livelihood³⁴, to advance their economic interests, to protect them from social injustice and all forms of exploitation³⁵, with exceptional concern.

7) The Bombay High Court in *The Senior Divisional Commercial Manager, SECR, Nagpur v. The General Secretary, Parcel Porter Sanghatan, SER, Nagpur Division*³⁶ had taken a similar view as viewed in *Narayanan and Sundarambal cases* (supra), and held that the absence of rebuttal proof as to how the licensed workers do not fall within the definition of the 'workmen', and the absence of sufficient proof as to how the activities entrusted by the Railways and the activities discharged thereon by the licensed porters do not fall within the meaning of the "industry" under the Industrial Disputes Act 1947, will make the licensed workers to be considered as the 'workmen', and the activities to be deemed as "industry". Therefore, the licensed porters are entitled to uphold allusion before the Industrial Tribunal.

8) But the Telangana High Court in the year 2018 while deciding *South Eastern Railway Licensed Porters Union, Visakhapatnam v. Union of India*³⁷ filed by the RLSs requesting for absorption as regular workers, prevention of contract employment and payment of minimum wages, held that the relationship of licensed porters with the railways does not form the relationship of employee-employer. The licensed porters are only the licensees who will function under a license agreement in the premises of the railways as long as the license is in existence. However, they are entitled to payment of minimum wages as fixed by the local authorities on par with the casual labor for the works discharged in relation to the loading and unloading of parcels in the brake vans.

9) Recently in April 2024, the India's Apex Court held that bureaucratic formalities cannot be applied to deny a worker for regularization if the selection was fair and such worker serves for a significant period. It has laid a principle that in case of fairly appointed workers and when they are discharging identical duties as that of counterparts in regular positions, the laborers shall not be denied to be regularized and to get the identical benefits merely because of they were termed as temporary³⁸.

IV. DISCUSSION

Need for meaningful evolution of the IRLSs in view of the Indian Constitution & Statutory Legislations

The Indian Constitution dreams evolution of every citizen - by making the *right to food* as one of his/her fundamental rights being available as a constitutional remedy³⁹, by obstructing exploitation, by giving freedom of expression⁴⁰ and liberty⁴¹, by maintaining parity among equals in equal situations⁴², by maintaining impartiality⁴³, by hindering the concentration of wealth⁴⁴, by distribution of material resources, where it requires the State to

³³ AIR2007MAD200, (2007)2MLJ480.

³⁴ Constitution of India, Art. 39(a).

³⁵ *Id.*, Art. 46.

³⁶ WP No. 4472/2008, Bombay High Court, decided on Oct. 14, 2009.

³⁷ WP No. 13809/2002, decided on Oct. 05, 2018.

³⁸ News Bureau PM, "Employee Appointed Through Valid Process Can't Be Denied Regularization If Performing Permanent Role For Considerable Time: SC" *People Manager* (Apl. 29, 2024).

³⁹ *Id.*, Art. 32.

⁴⁰ *Id.*, Art. 19.

⁴¹ *Id.*, Art. 21.

⁴² *Id.*, Art. 14.

⁴³ *Id.*, Art. 15.

⁴⁴ *Id.*, Art. 39(c)

frame policies and ensure that every citizen has a *right to work*⁴⁵ and public assistance to have sufficient means for livelihood⁴⁶ in redundancy, old age, illness, disablement, and unearned situations, and his/her nutrition levels and living status⁴⁷ have been enhanced. There is a social responsibility on both the State and the community to make every effort so that every citizen is exterminated from poverty and starvation, and maintains a decent human dignified life⁴⁸.

In order fulfilling the above goals, the legislative enacted various laws defining the work, workmen, industry, wages, compensation, etc. to eliminate confusion or to judiciously decide the disputes that usually arise between the workers and employers for wages and permanent employment, besides making special provisions for socioeconomic status of the downtrodden sections, women and minority people which are sometimes might not have been interpreted shrewdly by the executive agencies or law enforcing agencies. Since legal researchers are to give well thought-out interpretations after an in-depth study in accordance with the advancement of the society, these researchers have also premeditated dictionary definitions to various terms, expressions, and legal provisions relevant to the current study for better understanding and proper analysis of the problem, as discussed below:

The Merriam Webster defines a person who works manually also is a "worker"⁴⁹. *The Cambridge Dictionary* defines a worker is one who does not have powerful role but works for any establishment⁵⁰. *The Britannica Dictionary* defines a worker is one, who does a particular job to earn money and whose work does not involve managing other individuals⁵¹.

The Indian Railways Act 1890 states that any person employed by railway administration in connection with the service of the railway is a railway servant⁵², and railway means and includes any portion of the railway for the public carriage of passengers, animals and goods⁵³.

The Workmen Compensation Act 1923 explains that any benefit or privilege which is estimated in money other than travel allowance, is a 'wage'⁵⁴. It also explains a 'workman' is any person whose engagement is not casual but works for the employer, excluding a person who is not related to the activities of the employer⁵⁵.

The Industrial Disputes Act 1947 clarifies that any individual even an apprentice engaged for hire or reward by any industrial unit against skillful or unskillful, physical or clerical work, irrespective of the work conditions whether articulated or oblique, except a person who is within the ambit of Army Act 1950 or Air Force Act 1950 or Navy (Discipline) Act 1934 or (ii) police personnel or prison personnel or (iii) who is hired to look after the duties with decision-making powers or (iv) who is in a supervisory cadre drawing wages more than the prescribed wages under this Act⁵⁶.

The CLRA Act 1970 explains that the nature of work is to be considered as 'perennial' if the work is performed beyond 120 days in the previous 12 months, or if it is having a recurrent spirit with at least 60 days of requirement in a particular year⁵⁷. The Act covers all such workers employed in every establishment under the Act.

⁴⁵ *Id.*, Art. 41.

⁴⁶ *Id.*, Art. 39(a).

⁴⁷ *Id.*, Art. 47.

⁴⁸ Right to Food - a Fundamental Right, *NHRC*, available at:

⁴⁹ Available at: <https://www.merriam-webster.com/dictionary/worker#:~:text=%3A%20one%20that%20works%20especially%20at,member%20of%20the%20working%20class> (last visited on: Jun. 12, 2024).

⁵⁰ Available at: <https://dictionary.cambridge.org/dictionary/english/worker> (last visited on: Jun. 12, 2024).

⁵¹ Available at: <https://www.britannica.com/dictionary/worker> (last visited on: Jun. 12, 2024).

⁵² Sec. 3(7).

⁵³ Sec. 3(4).

⁵⁴ Compensation Act, Sec. 1(m).

⁵⁵ *Id.*, Sec. 1(n).

⁵⁶ ID Act, Sec. 2(s).

⁵⁷ The CLRA Act, Sec. 1(5)(b).

The Payment of Gratuity Act 1972 clarifies that every person excluding the apprentice, hired expressly or impliedly on wages to work in any factory including railways to carry out any work including manual, unskilled, semiskilled, etc. is an 'employee' except a person holding a post governed by any other legislation for payment of gratuity⁵⁸. It also elaborates that wages are the emoluments paid to him in cash for work excluding bonus, commission, house rent allowance, overtime wages and any other allowance⁵⁹.

The amalgamated Social Security Code 2020 illuminates that social security is a protection provided to every worker inclusive of unorganized laborer, gig worker and platform worker. The protection is to ensure that the workers are having access to healthcare, income security particularly during old age, unemployment sickness, invalidity, work injury, maternity or loss of a breadwinner⁶⁰.

V. ANALYSIS & CONCLUSION

In the year 2024, the Government of India claims in the Rajya Sabha that the Railways is sincere towards welfare of licensed sahayaks through several schemes which includes increase of travel passes, medical assistance, rest room facilities, more number of uniforms, besides allowing them for free use of light trolleys and hand barrows for carriage of passenger's luggage, construction of ramps and escalators⁶¹. As these do not give any social protection, this indicates that the State's is yet to focus on the wellbeing of these sahayaks.

On a key analysis of the study, it is understood that the support is given for one or two times travel for self and with spouse from workstation to the other station and back, and to freely use the amenities available to the passengers besides outdoor treatment in the railway managed hospitals only. This is as evident from the verdicts of the Government in Lok Sabha and Rajya Sabha during the years 2012 as well as 2024 respectively. In the 2012, the Government has stated that the licensed porters are not railway employees, but their wellbeing is taken care of by making them eligible for outdoor medical facilities in Railway Dispensaries for self, wife and dependent children, one set of privilege pass for self, and one set of pass for self and spouse in II/SL once in a year, free educational facilities to the wards in the schools managed by Railways or Railwaymen's Organizations or Mahila Samitis, and limited number of uniforms⁶². More or less, the same verdict has been expressed in 2024 also as elucidated above. Hence, it is clear that the fate of the licensed porters is more or less same even from 2012 to till date and there is no much advancement towards their social protection.

Further, the Government is projecting uniform as a benefit offered to the licensed porters. In fact, the study reveals that the cost of the uniform is included in the license fee collected from the licensed porters and the same is deducted from license fee in case of procurement directly by the porters. Hence, it is not to be shown as a benefit to them.

The study further reveals that –

(a) By showing the competence of the licensed porters, the railways is improving its financial resources but it appears that it is yet to show much interest for the wellbeing of these licensed porters.

(b) The licensed porters are affected to work-related illness but the insurance coverage is found meager. Medical facility is not covered the laboratory expenses and private hospitals. The maternity relief to women porters, health coverage and the old age protection are not extended.

(c) During Covid-pandemic situation and lockdown nationwide, the licensed porters and their families were on the edge of hunger, and therefore, the State shall extend social protection in such unforeseen circumstances.

⁵⁸ Payment of Gratuity Act, Sec. 2 (e).

⁵⁹ *Id.*, Sec. 8(s)

⁶⁰ The Code on Social Security, 2020, available at: <https://vvnli.gov.in/en/code-social-security-2020> (last visited on: Jun. 12, 2024).

⁶¹ Available at: https://rsdebate.nic.in/bitstream/123456789/706823/1/IQ_250_27112019_U1096_p365_p367.pdf (last visited on: Jun. 10, 2024).

⁶² Lok Sabha, Unstarred Question No.4399 answered on May 03, 2012 under "Fate of Licensed Porters".

Researchers observe that employment protection is an integral part of the *right to work* which is an integral part of the *right to life*, and a definite Employment Protection Legislation (EPL) is to be promoted⁶³.

(d) The registered road construction women workers were given the paid maternity leave benefit of 26 weeks duration for two delivers⁶⁴ in addition to night transport facility, etc., but the same benefits are not extended to the licensed railroad women porters.

(e) Though the CLRA and such other potent labor laws exist, since the IRLSs are not included under the coverage of these legislations and in the absence of this their evolution is not upto the extent. The applicability of labor laws also became minimal.

In view of the study and subsequent analysis, it is concluded that since most of the licensed porters belong to downtrodden sections who have special reservations for advancement, and are also doing loading and unloading of parcels of brake-vans on hourly-rate 'wages' on par with the other counterparts who are working as porters in the parcel yards, in addition to carriage of railway passengers' luggage, and as their appointment is made and controlled by 'railways' which is considered as an industrial establishment under Sec.2(e)(3) of the Industrial Employment (Standing Orders) Act 1946 as well as Sec.2(4) of the Indian Railways Act 1890, and as rightly observed by the apex court in the case of *Miss A. Sundarambal case* (supra) that a 'workman' is a person employed in any industry to carryout skilled or unskilled, manual or clerical work for 'hire' or 'reward', and as also rightly observed by the Calcutta High Court in *Narayanan case* (supra) a way back that the relation between the railways and the licensed porters is deemed as employer-employee relation because the railways engages and controls their work conditions - a mere work relationship with railways suffices for the licensed sahayaks to be considered as employer and employee relationship and to be deemed as 'workmen' for coverage under labor and social protection laws.

As Government claims that it is committed for the wellbeing of every section of the society which is to act as a model employer, it will have to show its sincerity in reality by allocating adequate resources for the advancement of every laborer in whatever means he/she is engaged. As Social Security Code 2020 is also beneficiary legislation even to unorganized sector workers, the railway licensed porters are also to be sheltered under this law.

The Government is in fact directly collecting charges from its customers for their availing of every service like electricity, travel etc, and is paying wages to the workmen appointed for the purpose out of the funds generated thereon, then why not the identical procedure is adopted in case of licensed porters, especially when the government is only fixing the rates of carriage of passengers luggage and governing their engagement. The railways can directly collect these carriage charges from its customers who are its own passengers, and can pay wages to these laborers to cover them by labor laws especially under CLRA Act. The Supreme Court recently has rightly said that bureaucracy formalities can be limited to help workmen.

As the citizens of India and more particularly when having special provisions as belong to helpless sections, the licensed porters have every right for allocation of material resources by the Government for their meaningful life and to be integrated into the civilized society, otherwise the goal of the Constitution will be left scornful. It is the need of the hour to end the afflictions that the licensed porters had all these centuries, when the entire India is celebrating Azadi Ka Amrit Mahotsav.

VI. SUGGESTIONS

1) The recent verdict of the apex court acknowledges the significance of the essence over formation of work relationships. The same can be applied to the cases of licensed laborers in view of their due selection and significant period of service, without taking into consideration the procedural formality of their engagement through license.

⁶³ Botuku Ramesh Babu and Prof Dr V Vijay Lakshmi Protection Against Unemployment - A Fundamental Right? A Study In The Context Of Indian Constitution, Indian Judiciary & International Perspectives. *Educational Administration: Theory and Practice* (2024), 30(6), pp 289–303. <https://doi.org/10.53555/kuvey.v30i6.5169>

⁶⁴ Amrita Madhukalya, "Maternity leave for women in construction work, wages to be deposited in bank account: Govt." *Deccan Herald* (Jan. 30, 2024).

- 2) The ultimate goal of the State shall be to provide everyone employment, and to make everyone sustain and to contribute to the economic progress of the nation. The Constitution does not prevent the State and in fact directs it to make every provision for the wellbeing of the weaker sections which occupy considerable place in the unorganized sector employment like the IRLS. Hence, the State is to recognize IRLSs as workmen, and strive towards their evolution.
- 3) The coverage of the ESI Act has been extended to various workers engaged in establishments which employ 20 or more laborers⁶⁵, and the same may be extended to the licensed sahayaks since health is of utmost importance for a meaningful life.
- 4) The licensed women sahayaks can be considered for maternity relief in the lines of the benefit granted to the registered road construction women workers, as women empowerment is a constitutional goal.
- 5) The Government is to extend the coverage of *The Employees Pension Scheme* that provides superannuation pension, retiring pension or permanent total disablement pension to the unorganized sector workers also.
- 6) Since the amalgamated Social Security Code 2020 did not speak about the IRLS specifically, the Government is to bring the IRLSs within the coverage of this law on par with the gig and other platform workers for social protection and to clear the ambiguity.
- 7) The Government shall have to keep in view the previous Covid-pandemic situation, and frame policies to give social protection to the licensed laborers that help in such unpredicted circumstances failing which the living of these laborers would become demeaning, and indeed, it would be a scorning of constitutional goals. Protection against unemployment is to be considered as a fundamental right.

⁶⁵ Available at: <https://www.esic.gov.in/coverage> (last visited on: Jun. 12, 2024).