

Riots and Rights: Law and Exclusion in Singapore's Migrant Worker Regime

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Abstract

This article examines the legal framework regulating unskilled and low-skilled migrant workers in Singapore. It argues that the current legal framework discriminates against these migrant workers and conceptualizes them as undesirable for inclusion in the wider society. This, it is contended, is premised on the assumption that migrant workers could be sequestered from the local population to some extent. This article provides some challenges to this assumption, highlighting instead some of the broader social and political consequences of this exclusionary legal framework. Consequently, it is argued that a more inclusive and integrationist approach is needed, and some positive developments are highlighted.

Keywords: immigration, migrant rights, discrimination, social exclusion, integration

1. INTRODUCTION

It was a crowded Sunday night just like any other. Migrant workers, mostly of Indian and Bangladeshi origin, congregated in Singapore's Little India district, mingled among themselves on their only day off for the week. But, on December 8, 2013, the unexpected happened. A "riot" of about 200 people broke out after a private bus accidentally ran over and killed a migrant worker. The incident incensed the crowd, which started to attack first responders as well as subsequent police cars and emergency vehicles. The riot made world news, not because it was particularly serious—indeed, there were no fatalities and only limited property damage—but because it was a rare incident of public disorder in highly regulated and typically well-ordered Singapore.

The Singapore government's response to, what is now known as, the "Little India riot" was characteristically swift and efficient. Those involved in the riot were dealt with in three ways. First, there were 28 migrant workers who, accused of active involvement, were charged for rioting.¹ They allegedly committed acts of violence, damaged property, defied police orders, and/or incited others.² Second, those with "less egregious" roles (such as

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1. Hussain (2013).

2. Forty-five persons were initially arrested but eight were released from police custody after it was found that they were not involved in the riot and two released on bail pending further investigations. Although the remaining 35 suspects were charged initially, these charges were withdrawn against seven suspects after further review, *ibid.*

obstructing the police during the incident and defying police orders to disperse) were given “stern police warnings,” had their work passes cancelled, and were repatriated.³ According to the Singapore government, those who received such police warnings were considered “undesirable immigrants” and therefore could be repatriated immediately. They would also be prohibited from entering into Singapore again. In the third category were about 200 workers who were present at the scene but said to have played “relatively passive” roles (i.e. they did not participate in the riot and generally obeyed police orders). They were merely cautioned and allowed to remain in Singapore.⁴

In the wake of the riot, questions arose as to its possible social causes, and particularly whether it was related to the treatment of migrant workers in Singapore. Three viewpoints can be identified. First, there were those who drew a causal link between claimed systemic abuses and discrimination that migrant workers faced in Singapore and the riot. This was predominantly the position taken in international news channels. The BBC claimed that the riots, together with an earlier strike by foreign-labour bus drivers, “shone a spotlight on the low wages paid to some migrant workers and the conditions in which some live.”⁵ *The Daily Beast* argued that, for the many migrants constructing Singapore’s “glittering high-rises, life can amount to indentured servitude.”⁶ Consequently, *The Guardian* pointed out that the riot is “likely to fuel concerns about discontent among low-paid foreign workers.”⁷

A second line of response to the riot noted that many migrant workers in Singapore were subject to exploitative conditions, but refrained from making causal links between that and the riot. This was the response largely taken by local non-governmental organizations (NGOs), which nonetheless took the opportunity to highlight the exploitative conditions that some migrant workers experience in Singapore.⁸ One of the main civil society organizations (CSOs) advocating for migrant workers’ rights, Transient Workers Count Too or TWC2, issued a statement asking for restraint and noting that “riots are complex events, often triggered by some minor dispute.”⁹ TWC2 did however also point out that “the threshold for tipping into anti-social acts is lower” when a group or community “harbors an underlying grievance.”¹⁰ In this regard, TWC2 used the incident to highlight its position that migrant worker communities have experienced substantial “employment unfairness for a long time” which includes not receiving correct salaries or sometimes any salary at all, while others have seen their friends injured at work but denied proper medical treatment by their employers, or seen their friends unjustly and illegally repatriated without receiving full salaries or injury compensation.¹¹ TWC2 stopped short of saying that these festering grievances played a part in the violence, but nonetheless urged the government to take the opportunity to pay more attention to these grievances.¹²

3. Neo (2013); cf. Ismail (2013).

4. Hussain (2013).

5. BBC (2013).

6. Han (2013). See also *The New York Times* (2013).

7. *The Guardian* (2013).

8. See e.g. Heng (2014); Saad (2014); Shen & Armstrong (2013); Lee (2014).

9. Heng (2014).

10. *Ibid.*

11. *Ibid.*

12. *Ibid.*

A third type of response denied any causal link or correlation between the riots and the general conditions experienced by migrant workers. This was put forward by the Singapore government, which quickly and firmly dismissed claims of “widespread abuse.” Acting Minister for Manpower Tan Chuan-Jin emphasized in Parliament that it would be “wrong to make negative generalizations about the foreign workforce from this incident,” including those pertaining to the “chronic and poor treatment of these workers.”¹³ Prime Minister Lee also insisted that the riot was “spontaneous” and “localized,” and that there was “no reason to believe that the riot in Little India was due to unhappiness among foreign workers here.”¹⁴ Instead, Lee suggested that there were signs that alcohol was a factor in igniting the violence.

The government’s assessment of the incident, namely that it was localized, alcohol-related, and unconnected to the working and living experiences of migrant workers, is clearly reflected in the government’s immediate response to the incident. Not only did it ban alcohol sale and consumption in public in the Little India area immediately after the incident,¹⁵ but Parliament also passed a new law giving the police enhanced investigative as well as stop-and-search powers within the designated zone. This new Public Order (Additional Temporary Measures) Act¹⁶ continues a general prohibition against the sale, supply, and consumption of alcohol within the area, and is valid for up to one year.¹⁷ The insistence that the riot was a law-and-order issue, rather than a migrant worker’s rights issue, is further reflected in the terms of reference for the Committee of Inquiry appointed to investigate the incident.¹⁸ Although the terms include establishing “the factors and circumstances that led to the riot,” the bulk of the terms of reference address law enforcement issues. Thus, the Committee was asked to establish how the riot unfolded and how the response forces managed the incident, to consider whether current measures to manage such incidents in areas where foreign workers congregate such as Little India are adequate, and to recommend any further measures to improve their management and reduce the risk of such incidents.¹⁹

This law-and-order response to the incident was perhaps to be expected in the social, legal, and political context of highly regulated Singapore. However, an approach that treats this as simply a rare incident of public disorder risks overlooking important social issues that the incident surfaced. Instead, as the second type of response emphasizes, the incident presents an opportunity to examine potentially exclusionary aspects of the current regulatory regime that shape the relationship between unskilled and low-skilled migrant workers and the general Singaporean society. Furthermore, the incident shows that it is necessary to investigate the adverse long-term consequences of the corresponding social and emotional disconnect between the local population and its migrant worker population. There are currently almost one million work permit holders in Singapore: 80% of these are male workers who work primarily in the construction industry whereas the remaining 20%

13. Toh (2014).

14. Chan (2013).

15. Heng (2013).

16. Act 12 of 2014.

17. See Ministry of Home Affairs (2014a); Lim (2014); *Channel News Asia* (2014).

18. Ministry of Home Affairs (2013). The appointment was done pursuant to the Inquiries Act (Cap. 139A), s.9.

19. *Ibid.*; see also Ministry of Home Affairs (2014b).

are domestic workers.²⁰ Putting this in perspective, this means that about 18% of people living in Singapore are work permit holders. The law that regulates their admission and stay in Singapore however permanently excludes them from being incorporated into Singaporean society. The expanded size of this group of workers poses increasing challenge for Singapore's legal regime, in particular undermining the underlying assumption that the rights and interests of the migrant worker population are and could be sequestered from those of the local population.

This article examines the exclusionary aspects of the legal regime governing unskilled and low-skilled workers, and argues that there are broader implications for the law's conceptualization of the migrant worker as being undesirable for inclusion in the wider society. The article is structured as follows. Part 2 examines the regulatory framework in Singapore for unskilled and low-skilled migrant workers, and highlights the discriminatory aspects of the law. Part 3 challenges the assumption underlying the law, which is that the migrant workers could somehow be sequestered from those of the general population. The social and political consequences arising from this discriminatory regulatory framework are also highlighted. Part 4 provides arguments for a more inclusive and integrationist approach towards migrant workers. Part 5 highlights some positive developments in recognizing the migrant worker as a subject worthy of protection beyond a mere economic actor.

2. EXCLUSION AND THE REGULATORY FRAMEWORK

Migrant workers are today recognized as a vulnerable group, with vulnerability understood here as "a social condition of powerlessness ascribed to individuals with certain characteristics that are perceived to deviate from those ascribed to the prevailing definitions of a national."²¹ There are several factors for this. First, as non-nationals, they are usually excluded from the political processes which produce decisions that directly affect them.²² Second, their unfamiliarity with the host state, whether due to language or cultural differences, or due to their lack of knowledge about the legal system and administration, may create conditions of apprehension, anxiety, or even fear. Third, migrants are also more likely to suffer from stereotypes, prejudices, racism, xenophobia, ignorance, and discrimination.²³ Such cultural elements assign derogatory ideas to immigrants, which tend to justify power differentials between nationals and non-nationals or immigrants.²⁴ Fourth, with specific regards to low or unskilled workers, their vulnerabilities are exacerbated by the type of economic activity that they are engaged in, which tends to command little respect.²⁵

Regulatory frameworks that do not purposefully address these vulnerabilities tend to accentuate them significantly. This could be said of Singapore's work permit regime, which

20. As at June 2014, for instance, there were 980,800 work permit holders in Singapore, of which 218,300 were foreign domestic workers. The rest were non-domestic workers with the construction industry making up the highest number at 321,200 workers. See Ministry of Manpower (2014b).

21. Bustamante (2002), p. 340.

22. Pécoud & Guchteneire (2006), p. 244.

23. *Ibid.*

24. Bustamante (2002), p. 339.

25. Pécoud & Guchteneire (2006): "Many foreign workers work in so-called 'three-D' jobs (dirty, degrading, and dangerous), and are over-represented in marginally viable and sometimes semi-legal sectors such as seasonal agricultural work, domestic services, and the sex-industry, in which the protection of workers is underdeveloped."

tends to discriminate against migrant workers and lead to their social exclusion. It does so by constructing the migrant worker as being undesirable for inclusion in the broader society. The following sections discuss these laws.

2.1 Work Permit Regime: Singapore's Guest Worker Programme

In 2012, a proposal was mooted as to whether Singapore should house its migrant workers at nearby offshore islands, instead of on the main island in proximity to the general population. The Minister for National Development said in a parliamentary speech that this was a possibility as long as it does not cause “too much inconvenience to [the foreign workers] or to Singaporeans.”²⁶ An assumption underlies this proposal that, apart from considerations of convenience, it is unproblematic to physically segregate migrant workers. Under Singapore's stratified visa scheme for foreigners working here, unskilled and low-skilled migrant workers are employed under the work permit regime. This is different from the “employment pass scheme,” which is available to professionals and mid-skilled workers.²⁷ The dividing line between a work permit and an employment pass is defined by the nature of work, the workers' qualifications, and salary to be earned. Hence, unskilled or low-skilled migrant workers earning low wages are generally governed under the work permit regime. Work permit holders also typically come from developing countries. Besides Malaysia, other common source countries are People's Republic of China, India, Sri Lanka, Bangladesh, Thailand, Myanmar, and the Philippines.²⁸

The work permit regime is essentially a temporary foreign worker programme, much like the guest worker programmes implemented in many Western European states during the postwar boom. These temporary worker programmes typically entail state control of recruitment, mobility, and working conditions.²⁹ Workers are admitted on a temporary basis to fulfil labour shortages in the host country. There is generally an assumption that temporary worker programmes such as these deliver benefits that are immediate, concentrated, and measurable, while their costs could be deferred, dispersed, and would in any case be difficult to quantify.³⁰

Singapore's work permit regime gives businesses and individuals the opportunity to access and utilize cheap foreign manpower.³¹ This disproportionately improves the economy's competitiveness. As Eng points out, a host country does not have to pay the high costs of bringing up and educating migrant workers but reaps the productive output of the

26. Singapore Parliamentary Reports (2013), col. 30; see also Ramesh (2013).

27. Professionals earning above a certain income bracket would be able to hold an employment pass (EP), while mid-skilled workers earning a slightly lower salary would be given an S Pass. See Ministry of Manpower (2014a) and Ministry of Manpower (2014d).

28. Until the 1970s, workers from West Malaysia dominated the initial flow of migration. However, in the 1970s, when Malaysia embraced an export-oriented industrialization strategy and restricted the flow of Malaysian workers into Singapore to address its own labour shortages, the Singapore government started permitting the recruitment of migrant workers from “non-traditional” (i.e. non-Malaysian) countries such as India, Bangladesh, Sri Lanka, Indonesia, and Thailand, so as to widen the pool of migrant workers. See Kaur (2007), para. 30. Today, according to the ICA, the common source countries generally fall into one of these three source country/territory groupings: North Asian Sources (NAS) (i.e. Hong Kong, Macau, South Korea, and Taiwan); Non-Traditional Sources (NTS) (i.e. India, Sri Lanka, Thailand, and Bangladesh); and the Republic of the Union of Myanmar and Philippines, and People's Republic of China (PRC); Ministry of Manpower (2014e).

29. Castles (1986), p. 762.

30. See discussion generally in Martin (2006).

31. E.g. Singapore Parliamentary Reports (2007), cols. 929–31. The Minister for Manpower, Dr Ng Eng Hen, explained: “The ability of our companies to access foreign manpower is a comparative advantage.”

migrants' prime working years.³² Like other guest worker programmes, Singapore's work permit regime envisages the workers to be transient. Their recruitment, mobility, and working conditions are heavily regulated to ensure this transiency. The foreign workers enter the country with specific employment often obtained through recruitment agencies. Once in Singapore, their economic mobility is strictly curtailed by regulations tying them to one employer. Any changes in employment are made difficult by the requirement that they require the consent of the current employer. Work permit holders in Singapore are also subject to a myriad of conditions that restrict their ability to freely associate with the local population.

These restrictive regulations construe these migrant workers as mere economic actors, whose other human attributes could be suspended for the duration of their economic engagement in Singapore. This further presumes that their interests and welfare are separable from those of the rest of the population. The legal regulations therefore serve to segregate and exclude them, not only politically, but also physically and socially. As mentioned, there are currently almost one million work permit holders in Singapore, which translates into about 18% of the total population. This is a large percentage of the population to be subject to a regulatory regime that does not sufficiently protect their rights and interests. As the recent events show, it is not viable or desirable to continue to conceptualize the migrant worker as having separable interests from those of the rest of the population. I will discuss this further in the next part. The rest of this section addresses the aspects of the regulatory regime that adversely impact on the rights and welfare of migrant workers, resulting in their social insecurity and exclusion.

2.2 *Insecurity of Employment*

When we look at the migrant workers' issue, we are not looking at it from the perspective of human rights. We are looking at it on a *need basis*.... Like it or not, we need to sustain and grow an economy that is able to generate an annual per capita [Gross Domestic Product] of US\$35,000. At the end of the day, whatever factors would be able to help us to sustain the growth of the economy for the benefit of our countrymen, for the benefit of our country; we will definitely go for it.

This quote from an interview with Yeo Guat Kwang, parliamentarian and then co-chairman of the Migrant Workers Centre,³³ reflects the deep developmentalist philosophy underlying Singapore's immigration policies.³⁴ This philosophy sees the employment of foreign labour as necessary to the continued success of the local economy and designs policies according to how best to promote economic success with minimal impact on the local society. Migrant workers impart flexibility to the labour market and the economy: in a tightening labour market, their quick importation relieves the pressure on wages while, in a recession, their quick repatriation could reduce the impact on local labour.³⁵ What is often regarded as objectionable about this developmentalist philosophy is that the worker is conceptualized as an economic actor, and little else. This tends to result in laws and policies that are

32. Eng (1982), p. 196.

33. The Migrant Workers Centre is a bipartite initiative of the National Trades Union Congress (NTUC) and the Singapore National Employers' Federation (SNEF).

34. Interview with China Labour Bulletin (19 May 2010), quoted in Chan (2011), emphasis added.

35. Eng (1982), p. 196.

economically expedient, but does not sufficiently take into account their discriminatory and exploitative impact. Indeed, several key elements in the work permit scheme legally ensure that migrant workers remain transient. In doing so, however, the work permit scheme also economically and socially excludes migrant workers from mingling with the local population, and makes it difficult for them to integrate into the Singapore society.

Indeed, a developmentalist mindset underlies the single-employer rule that is key to the work permit scheme.³⁶ Under the current regulations, unskilled or low-skilled migrant workers can only enter the country with a specific job offer from a stated employer in place, and an in-principle approval obtained by the intended employer.³⁷ Workers are not allowed to work for other employers when they initially arrive and they can only change jobs if their existing employer consents to the change, which he can unilaterally withhold without reason.³⁸ This seriously restricts their economic mobility.³⁹ Furthermore, employers can unilaterally cancel work permits which entails repatriation to the respective home countries.⁴⁰ The law provides some safeguards in terms of obligating the employers to pay all salaries and compensation before repatriation⁴¹ but this is not always done. For instance, in a 2013 survey, researchers at the Singapore Management University (SMU) found that 65% of injured and salary-claim workers surveyed reported having been threatened by their employers with premature repatriation.⁴² There have also been reports of employers' repatriating workers in order to avoid paying them their salary arrears.⁴³

The government's common justification for this single-employer scheme is that it ensures that employers bear the primary responsibility of ensuring that migrant workers are gainfully employed and provided for.⁴⁴ The right to repatriate migrant workers is furthermore characterized as an economic necessity that could be beneficial to the migrant workers, since it is "better" for them to return to their home country rather than be without work in Singapore. While these laws may make sense from a regulatory perspective, they have the effect of restricting the economic mobility and thereby autonomy of these migrant workers.

36. The starting point of the regulatory framework is s.5 of the EFMA, which prohibits the employment of any foreign employee without a valid work pass and prohibits the employment of a foreign employee "otherwise than in accordance with the conditions of the foreign employee's work pass." See also Employment of Foreign Manpower Act, s.12.

37. See Ministry of Manpower (2014e).

38. Employment of Foreign Manpower (Work Passes) Regulations 2012 (S569/2012), Fourth Schedule, Part IV, reg. 1: "The employer shall control and supervise the foreign employee. Except as provided in paragraphs 6 to 12 of Part V, the foreign employee shall be under the employer's direct employment." See the same at Part VI, reg. 1: "The foreign employee shall work only for the employer specified and in the occupation and sector specified in the work permit." See also the criticisms at Transient Workers Count Too (2013b); Tan (2013a).

39. *Channel News Asia* (2013).

40. Employment of Foreign Manpower (Work Passes) Regulations 2012 (S569/2012), Fourth Schedule, Part III, regs. 12, 13.

41. Employment of Foreign Manpower (Work Passes) Regulations 2012 (S569/2012), Fourth Schedule, Part I, reg. 23.

42. Transient Workers Count Too (2013a); in fact, preliminary findings from a study of workplace injuries and ill-health in 2011 reveal that slightly more than half of total costs fall on workers themselves, when quantified into dollar terms. Transient Workers Count Too (2013c).

43. Lin (2011).

44. In response to a question on freelance employment of foreign workers, Mr Gan Kim Yong said that: "[A]s we allow a foreign worker to come into Singapore, we would require an employer to be responsible for the stay and the work of that foreign worker. In the event that this particular foreign worker gets into difficulty, we would need to be able to hold a certain employer accountable and responsible for the well-being of this foreign worker. It will be very difficult for us to open the gate and allow foreign workers to come in without an employer to be responsible for them." Singapore Parliamentary Reports (2010,) col. 1660.

This renders them vulnerable to exploitation. Workers who are fearful of being repatriated would be less willing to make complaints against their employers. Unscrupulous employers may also use their right to unilaterally cancel a worker's work permit to threaten workers and suppress their discontent against onerous working and living conditions.⁴⁵ New migrant workers are most vulnerable to such exploitative practices because they would have incurred debts to recruitment agencies or private debtors to secure their jobs in Singapore and are especially anxious to keep working to pay back these debts.⁴⁶ This is a common reality. For example, TWC2 estimates that a majority of Bangladeshi workers in the construction industry have to work for at least 17.5 months to earn enough to pay off their placement fees.⁴⁷ Consequently, even though the employer is legally required to ensure that the employee has "acceptable accommodation," poor living conditions remains an area of significant concern in Singapore. Many workers live in dormitories, some of which are overcrowded and even unsanitary.⁴⁸ Others are housed in private flats that are often crammed beyond the legal and humanely acceptable limits.⁴⁹

In addition, there are other regulations which, when combined with the single-employer scheme, indirectly encourage excessive employer control over migrant workers and possibly engender an unhealthy chattel mindset. Employers are required to pay a foreign worker levy for each worker⁵⁰ and to furnish a \$5,000 security bond for each worker.⁵¹ This security bond serves to ensure that employers comply with their obligations to the worker, such as paying salaries on time or bearing the costs of repatriating the worker after employment ceases. Failure to comply would lead to forfeiture of the security bond. The security bond could be said to protect the workers, but its impact is likely to be limited. For instance, not all of the security bond could be accessed to repay workers if employers fail to pay salaries.⁵² Furthermore, even in Singapore where there is a high degree of rule of law, the effectiveness of the current regime still relies on the migrant workers' being willing to report the employers for any transgression that would trigger forfeiture. As mentioned, migrant workers do not always find it in their interests to do so, as they might lose their jobs. Consequently, only extremely serious violations would be reported, while grievances accumulate in the meantime.

45. Tan (2013a); Transient Workers Count Too (2014).

46. Section 21 of the Employment Agencies Act currently penalizes the employment agencies that charge a sum greater than the prescribed fee (i.e. a maximum of two months). However, this does not cover fees charged by employment agencies overseas (i.e. at the home countries). Fees for foreign domestic workers are generally between \$1,500 and \$2,500 whereas non-domestic migrant workers (such as those in the construction or shipyard industry) would typically pay \$8,000 to \$10,000. See Transient Workers Count Too (2010). See also Singapore Parliamentary Reports (2012) (especially speech by NMP Tan Su Shan).

47. Gee (2012).

48. For example, two dormitories were fined in 2011 for "using space that was not approved for accommodation purposes" and which was overcrowded and had poor ventilation. Asia One (2011); see also Chan (2011); Singapore Parliamentary Reports (2012) (especially speech by MP Christopher de Souza).

49. For example, the Ministry of Manpower was alerted to two condominium units where about 50 workers were found crammed into them. Rotting food, soiled clothes, and bags were strewn on the grimy floors of the units where the men slept shoulder to shoulder on the floor or on wooden boards along the corridors outside the apartments. According to Urban Redevelopment Authority guidelines, rented residential properties can house a maximum of eight people, regardless of size. *The Straits Times* (2014).

50. This is authorized by s.11 of the Employment of Foreign Manpower Act. See also Ministry of Manpower (2014c).

51. The security bond applies to all foreign nationals with the exception of Malaysian citizens. Ministry of Manpower (2014g): Employment of Foreign Manpower (Work Passes) Regulations 2012 (S569/2012), ss. 12, 13.

52. Au (2014).

While these aspects of the regulatory regime are justified on developmentalist grounds and are meant to be economically expedient, there are good reasons to suggest that they are economically counter-productive in the long run. When workers are subject to such employment restrictions, their economic capacity and productivity are kept suppressed, along with their ability to contribute to the Singaporean economy. This is because employers have little incentive to train workers with a view to upgrading their skills. Workers also do not receive salary increments that could incentivize them to increase their productivity. Migrant workers themselves are effectively discouraged by the system to build long-term working relationships. This results in a high turnover of migrant workers in Singapore, which makes it necessary for employers to keep training new workers.⁵³

Furthermore, workers who have been in Singapore for an extensive period of time and gained experience and skills are generally unable to become long-term residents of Singapore. They can do so only if they are able to obtain a different employment visa. The next level of work visa would be the S Pass. Work permit holders could qualify for the S Pass if they obtain a technical certificate for skills considered important to key economic sectors in Singapore *and* earn a minimum fixed monthly salary of \$2,200. Again, the conceptualization of the workers as transient would tend to discourage employers from providing them with extensive training that could allow them to qualify for the S Pass. This, and the workers' deep reliance on the employers to continue working and staying in Singapore, tends to undermine their bargaining power, keeping their wages depressed. As such, the number of work permit holders who would be able to apply for an S Pass is likely to be negligible.⁵⁴

2.3 *Restricting Social Integration*

The current regulatory scheme restricts migrant workers' right to family reunion as well as their capacity to form meaningful relationships. First, work permit holders, unlike holders of employment passes, are not eligible to sponsor dependants. This means that they are not able to bring their families with them when they come to work in Singapore. This reiterates the idea that they are transient workers, as they are expected to stay in Singapore only to work for a limited period of time, after which they are expected to leave the country to rejoin their families or to form new ones, but not in Singapore.

Second, the socially exclusionary character of the work permit regime is reinforced by the restriction of work permit holders to marry a Singapore citizen or a permanent resident only with prior approval of the Ministry of Manpower's Controller of Work Passes (Controller).⁵⁵ Marriage to either would entitle the work pass holder to obtain a dependants pass which could eventually grant them the right to stay in Singapore permanently. Work permit holders

53. Chia (2014); see also Building & Construction Authority (1992), p. 23: "The large, mostly unskilled and transient pool of foreign workers is a contributing factor to low productivity ... Whatever skills acquired are therefore lost and retraining is required." Interestingly, the construction industry has the lowest productivity rate in Singapore. See also recent governmental efforts to raise productivity where exceptionally, second-phase employment is allowed for work permit holders in the construction sector with effect from June 1, 2015.

54. There are no publicized statistics on how many work permit holders have been able to obtain work visas that would allow them a path to residency. However, at a panel for my course on Law, Migration, and Citizenship, a representative from the Ministry of Manpower acknowledged that applicants are likely to be extremely few. Immigration Panel, National University of Singapore, Faculty of Law, on February 17, 2014. The only exception was when the legal criteria for S Passes were revised for the service industry, leading to 7,800 work permit holders being upgraded to skilled status in 2013. *The Straits Times* (2013).

55. Employment of Foreign Manpower Act, s.3; see also Yeoh (2006), pp. 26, 29, 36.

who marry but fail to obtain prior approval could have their work permit revoked and be barred from returning to Singapore. According to media reports, this condition has caused some hardship for work permit holder and Singaporeans/PR couples who have not been able to obtain approval to marry.⁵⁶ The decision to grant such a permission to marry is determined by reference to the economic contribution of the applicants and the ability of the applicants to look after themselves and their family without becoming a burden to the society or state. The stated rationale behind this marriage restriction policy is to prevent large numbers of low-skilled or semi-skilled workers from taking root in Singapore.⁵⁷

Third, another condition of the work permit is that the foreign employee “shall not be involved in any illegal, immoral, or undesirable activities, including breaking up families in Singapore.”⁵⁸ Female foreign work permit holders, who are mostly domestic workers, are subject to a further condition: they are prohibited from becoming pregnant or delivering any child in Singapore during and after the validity period of her work permit. This is unless she was already married to a Singapore citizen or permanent resident with the prior approval of the Controller.⁵⁹ If a work permit holder becomes pregnant, her permit would be cancelled and she would be sent back to her home country. This is notwithstanding that the father of the child may be Singaporean, thus rendering the child eligible for Singapore citizenship by birth (if the child is born in Singapore) or by descent (if the child is born overseas).

Lastly, the time spent by work permit holders in Singapore does not count towards fulfilling the residency requirements for permanent residency. This denies work permit holders a direct path to citizenship. A migrant worker on a work permit could spend five, ten, or even 20 years in Singapore, but would not be eligible to apply for residency and could be asked to leave the country at any time (i.e. when his/her work permit is cancelled, with or without cause). In contrast, employment pass holders are able to apply for permanent residency after a certain length of time, which would in turn qualify them for a path to citizenship.

These legal conditions attached to the work permit regime makes it difficult for migrant workers to set roots in Singapore, keeping them transient. It also tends to signal to the general population that migrant workers are generally unsuitable and undesirable for inclusion into the Singapore society.⁶⁰ This reflects the assumption that allowing low- or semi-skilled workers to stay in Singapore would place a burden on Singapore’s national resources. For instance, in justifying the marriage approval scheme, the Ministry of Manpower relies on the need to protect the economic and social security of Singaporeans:

... we have to control the population size of Singapore. ... So imagine if every other ex-work-permit holder were to marry a Singaporean, we would not be able to manage our social services and social system. ... Even though we want to increase our population size, we have to ensure that those who want to live and have families in Singapore can look after themselves, their children and their families. That is the basic premise that we all must understand. ... Singaporeans do have human rights to be able to look after ourselves and manage our limited

56. Ng (2012).

57. *The New Paper* (2012).

58. Employment of Foreign Manpower (Work Passes) Regulations 2012 (S569/2012), Fourth Schedule, Part VI, reg. 8.

59. *Ibid.*, reg. 7.

60. Tan (2009), p. 117.

resources and to ensure that those legitimate Singaporeans would be well looked after and would not exact too much of our social system.⁶¹

The contrasting of the rights of Singaporeans against those of the migrant workers risks setting up a relationship of antagonism between the two, with possibly negative consequences for peaceful coexistence and integration. It also establishes a false choice for Singaporeans, as it suggests that migrant workers' rights and interests are inconsistent with theirs. That is of course not the case. On the contrary, not only do migrant workers contribute to Singapore's economic gains, but they also contribute to the wellbeing of Singaporeans, when they are able to form meaningful relationships with them. The most common example is foreign domestic workers who work for certain families for a long time and become an integral part of the family. Other migrant workers could also have the opportunity to form meaningful relationships. A purely economic calculus fails to take into account the emotional and relational benefits that could arise from such relationships. It does not give due weight to the migrant worker who wants to marry his pregnant girlfriend or a pregnant foreign domestic worker who wants to give birth and raise her child born to a Singaporean.

Comparing Singapore's work permit regime to guest worker programmes in Western European countries, one might posit that these restrictions are perhaps the most crucial in ensuring that admitted migrant workers remain transient. As Philip Martins has observed, one crucial reason guest workers programmes fail is that some migrants settle in destination countries and unemployment among the migrant population increases over time. He points out that this has led to the aphorism that "there is nothing more permanent than temporary workers."⁶² However, Martins points out, in relation to the guest worker programme in (then) West Germany, it is the assumption that migrants without families would not settle that contributed to the lack of plans or resources directed at ensuring their integration.⁶³

2.4 *Insecurity of Residence*

As mentioned, regardless of how long the work permit holder has lived in Singapore, he/she has no path to long-term residency or citizenship. This results in a lack of security of residence for them. In addition to that, their insecurity is increased by the fact that they may be expelled any time without recourse or due process. The ambit and practical effects of the state's right to expel immigrants takes us back to the aftermath of the Little India riots. More than 50 migrant workers were repatriated after the riots even though their involvement was found to be "less egregious."⁶⁴ The legal basis for this is the Immigration Act. Pursuant to section 8(3)(k) of the Immigration Act,⁶⁵ these workers were designated by the Minister as an "undesirable immigrant," which rendered them as "prohibited immigrants" under

61. Singapore Parliamentary Reports (2004), col. 665.

62. Martin (2006).

63. *Ibid.*, p. 14.

64. Neo Chai Chin (2013); cf. Saifulbahri Ismail (2013).

65. Cap 133, Rev. Ed. 2008; s.8(3)(k) reads: "The following persons are members of the prohibited classes: ... any person who, in consequence of information received from any source or from any government through official or diplomatic channels, is considered by the Minister to be an undesirable immigrant."

section 8(1) of the Act with immediate effect.⁶⁶ This gave the Controller of Immigration the power to cancel their visit passes under Regulation 17 of the Immigration Regulations.⁶⁷ Without valid visit passes, these migrant workers became liable to be removed under the Immigration Act.

In justifying the repatriation orders, the government asserted that “foreigners do not have an inherent legal right to work and stay in Singapore.” Instead, they can only do so “with the permission of the State.” The state asserts the right to expel foreigners who “flout our rules” as this is necessary to “maintain the safety and security” of Singapore.⁶⁸ Migrant workers advocates however criticize the lack of a right to appeal against those repatriation orders. According to MARUAH, a human rights NGO, this subordinates due process to expedience.⁶⁹ It denies those subject to repatriation orders access to justice, as they are not able to challenge any mistaken allegations or erroneous decisions.

Singapore justifies the right to expel workers as part of its sovereign power and secondarily on the basis of prior consent. Thus, the government has stated that “one of the conditions under which foreign nationals are allowed the privilege to come here to work is that they can be repatriated if, for example, the Minister assesses them to be security threats.”⁷⁰ With regard to the Little India riot, the government asserts that firm and quick action was necessary to avoid additional security risks, and that it was in the interest of Singaporeans that decisions on repatriation could be expeditiously made by the Minister for Home Affairs. In defending expeditious repatriations, the Ministry of Law sketched out the following scenario, which it asserts would create additional “costs” to Singaporeans:

If a court process had been necessary before they are repatriated, they could have stayed on in Singapore for a considerable period. They could have been given bail and be free to walk around Singapore, including Little India. And if they had not been given bail, they could be in our jails for a very long time, waiting for deportation. If the rules are such that transgressors can stay on in Singapore to fight their repatriation orders, then at least some among them will be less deterred from transgressing. Some may also go underground. These are not theoretical possibilities. The example of other countries shows that these are altogether likely and the repatriation process can take years. In some countries, repatriation is almost impossible.⁷¹

On the whole, the emphasis that quick repatriation is beneficial for Singaporeans reflects the underlying developmentalist philosophy on immigration—one that discounts the human rights aspects of migration. Expulsion is a powerful tool for the state to exercise disciplinary

66. *Ibid.*; s.8(1) reads: “Any person, not being a citizen of Singapore, who is a member of any of the prohibited classes as defined in subsection (3) or who, in the opinion of the Controller, is a member of any of the prohibited classes, is a prohibited immigrant.”

67. S259/1972, Rev. Ed. 1998. Regulation 17 states: “If the Controller is satisfied that the holder of pass issued under regulation 9, 10, 11, 12, 13, 14 or 16 is prohibited immigrant, or has failed to comply with the conditions specified in the pass or the purposes for which the pass was issued, or that his presence in Singapore is undesirable or would be prejudicial to public security in Singapore, he shall cancel the pass.”

68. Singapore Parliamentary Reports (2014).

69. Mathi (2013); see also MARUAH (2013).

70. Randhawa (2013).

71. *Ibid.*

powers over migrant workers.⁷² They would be less likely to challenge existing legal norms that keep them economically and socially depressed.⁷³

3. SOCIAL AND POLITICAL CONSEQUENCES OF THE SEGREGATIONIST POLICY

The regulatory framework has contributed to segregation between the migrant worker population and the local population. This has contributed to an undue sense of hostility among the local population against migrant workers. “The migrant worker” has thus become a scapegoat for discontent against the government. In this regard, the immigration issue has also been politicized to the detriment of the migrant workers. The following section elaborates on these.

3.1 *Prejudice and the Lack of Social Interaction*

In 2008, a government proposal to locate a migrant workers’ dormitory in an upper-middle-class neighbourhood was met with strong opposition by residents.⁷⁴ In arguing against the proposal, residents cited fears of an increase in crime, worries that the migrant workers would “seduce” their domestic workers, and even that the dormitory would cause their real estate to devalue.⁷⁵ These worries reflect a prejudice among some Singaporeans that migrant workers are more prone to criminal and immoral activities. Indeed, there is no evidence to show that the crime rates among migrant workers are higher than those among the non-migrant population. In fact, statistics released by the government at that time showed that foreigners, including construction workers, commit proportionally fewer crimes when compared to Singapore residents.⁷⁶ The arrest rate for work permit holders was even the lowest among the various groups of foreigners.⁷⁷

The political elite is also prone to perpetuating the stereotype of the “criminal” migrant worker. Recently, the Minister for National Development, Khaw Boon Wan, caused a controversy when he posted a Facebook update justifying a simulation exercise that employed migrant workers of South Asian origins to role play as rioters. He wrote:

We have a few foreign workers’ dormitories. What if some quarrels erupt, leading to fights or worse? These are possible scenarios, given the concentration of foreign workers in one locality. Little India riot was an extreme case, but minor scale fights could happen locally. To test our response capability, the Police, the Singapore Civil Defence Force (SCDF), the dorms operators and our grassroots organisations organised a simulation exercise recently. It was a useful way

72. Such disciplinary powers over non-citizens extend even to those who are “permanent” residents. In the 1988 case of *Siah Mooi Guat*, the Singapore courts affirmed that the government has broad powers to declare a permanent resident who had lived in Singapore for decades, owned real estate in Singapore, was gainfully employed, and was generally a law-abiding citizen an undesirable immigrant under the Immigration Act. *Re Siah Mooi Guat* [1988] 2 SLR(R) 165.

73. *Ibid.*

74. Tan (2008): some 1,600 residents signed the petition.

75. *Ibid.*; to pacify them, the government relocated the entrance to the dormitory and built a new road leading up to the dormitory, thereby diverting it away from the estate. It also assigned the dormitory space to male and female workers from the manufacturing and service industries rather than the construction sector.

76. Othman (2008); see also *Transient Workers Count Too* (2011).

77. *Ibid.*; according to the statistics, the arrest rates per 100,000 population were 435 for Singapore residents and 286 per 100,000 for foreigners. In fact, the arrest rate for work permit holders alone was even lower, at 227 per 100,000 (1,644 were arrested). Singapore residents made up 73% of the total population at that time and foreigners 27%.

to network up the various agencies, and spread preventive messages. Prevention is always better than cure.

Social activists criticized the exercise as racist, as it perpetuates the stereotype of migrant workers as being more prone to disorderly behaviour. As one blogger wrote, “the exercise showed only South Asian-looking men, it doesn’t take a very deep reading to get the message: when there are many foreign workers of a certain race in one area, violent clashes are more likely to happen.”⁷⁸ Khaw’s post raises a deeper question as to the perceptibility of the political leadership to the vulnerabilities of the migrant worker to discrimination and social exclusion, and the consequences of such exclusionary perspectives.

Contrary to the stereotype, there is good reason why migrant workers are likely to be more careful not to fall foul of the law. As has been observed, migrant workers often pay significant costs to come to Singapore for employment. Having incurred debts and left their families behind, they are less likely to want to jeopardize their job or immigration status by committing crimes. Many have the singular aim of earning money to support their families back home and for their own financial security in the future. Taking part in illegal activities and committing crime run counter to their financial interests.⁷⁹

One might also posit that the prejudice against migrant workers is partially class-based. Migrant workers on work permits generally perform manual labour in jobs that Singaporeans tend to avoid. As Martin Ruhs points out, one common adverse consequence of temporary foreign worker programmes is the emergence of “immigrant sectors” in the economy, namely sectors that primarily or exclusively employ migrant workers.⁸⁰ These immigrant sectors cover what is often perceived as “undesirable work” that the local workforce is assumed to not want to take up any more by virtue of their higher levels of education and/or affluence.⁸¹ This seems to hold true in Singapore, too. Work permit holders are concentrated in the construction, marine, manufacturing, and domestic work sectors.⁸²

Immigrant sectors tend to suffer from depressed wages and poorer working conditions relative to the rest of the economy because they employ workers who have very little bargaining power. This perpetuates the undesirability of these sectors in the eyes of the local workforce, thereby perpetuating the unfavourable conditions experienced by migrant workers in these sectors. Ruhs identifies another related problem which is that “immigrant sectors may lead, or at least contribute, to social exclusions and marginalisation of the foreign workers employed in these sectors.”⁸³ These workers are seen as being at the lowest of the socio-economic class, and may be subject to intolerant and xenophobic sentiments among the local population.⁸⁴

78. Han (2014).

79. Transient Workers Count Too (2011).

80. He identifies four other common adverse consequences: the vulnerability of migrant workers towards various forms of exploitation in recruitment and employment, the tendency of temporary foreign worker programmes to become longer in duration and bigger in size than initially envisaged, native workers’ opposition against the introduction or expansion of a temporary foreign worker programme, and the emergence of illegal foreign workers who, together with native employers, circumvent the programme. Ruhs (2002).

81. *Ibid.*, p. 19; as Ruhs explains, the emergence of immigration sectors is reinforced by the restriction of the employment of foreign workers to certain sectors and/or occupations of the host economy. This has led, or at least contributed, to the desertion of these sectors/occupations by native workers, thus giving rise to (or at least exacerbating) the (further) segmentation of the labour market and the emergence of immigrant sectors.

82. For the latest statistics on work permit holders, see Ministry of Manpower (2014b).

83. Ruhs (2002), p. 22.

84. *Ibid.*

The tendency towards intolerance and xenophobia may be exacerbated by the legal and social segregation that a regulatory regime engenders. Singapore's regulations envisage migrant workers to be transient and signal to the host population that they are unsuitable for long-term inclusion. Consequently, they are perceived as being in the country on sufferance, and would otherwise be unwelcome if not for the fact that they provide needed cheap labour. This is further reinforced by aspects of the regulatory regime that effectively require work permit holders to suspend and suppress their social needs. For instance, by restricting migrant workers from marrying Singaporean citizens or residents without prior permission, the law signals to the local population that they are socially inferior, or even that they are predatory—that is, migrant workers would target local residents in order to obtain long-term or even permanent immigration status.

One new regulation that provides recognition of migrant workers as social actors in Singapore concerns weekly rest days for foreign domestic workers. Prior to January 2013, there was no law requiring employers to give foreign domestic workers a weekly day off. This made it legally possible for foreign domestic workers to work for years without a periodic rest day. A new regulation, introduced in 2012, required a compulsory weekly rest day. The Minister of State for Manpower acknowledged that a weekly rest day was an internationally recognized labour right and that, in addition to allowing the domestic worker some physical rest, it also provides her with “an emotional and mental break from work.”⁸⁵ This recognition of the social needs of the foreign domestic worker, however, remains limited by two features of the new law. First, the law only applies to foreign domestic workers whose work permits were issued or renewed after January 1, 2013. Those whose work permits predate January 1, 2013, still do not have a legal claim to a rest day. Second, the new law provides employers with an “escape” clause; they may obtain the agreement of the foreign domestic worker to work on her rest days and compensate her for those days.⁸⁶ The limited application of the law serves the interests of employers.

The regulatory framework's emphasis on the migrant worker as an economic actor, and not as a social actor, creates the perception that migrant workers do not have legitimate claims to social spaces outside of their workplace. This may fuel intolerance and discriminatory treatment when migrant workers do not conform to this expectation. There is an unrealistic expectation that migrant workers are here to work, and nothing more. When their social activities occur in shared public spaces, there are those within the host population that may feel that migrant workers have intruded into “their” exclusive spaces.

This sense of intrusion has increased with the rapid increase of migrant workers living in Singapore. Michael Barr, for instance, notes that, in the past, foreign migrant workers had been largely invisible to Singaporeans who dealt with them only in transactional and incidental encounters such as interacting with one's foreign domestic worker, waiter, boss, or construction workers around one's estate. This invisibility, he notes, is no longer the case.⁸⁷ It has become less possible to ignore the presence of almost a million foreign workers.⁸⁸ This means that, even though foreign workers still have their enclaves such as Little India (for South Asians), Lucky

85. Lim (2012).

86. Sim (2012).

87. Barr (2014).

88. Yeoh & Lin (2012).

Plaza (for Filipinos), and Golden Mile Complex (for Thais), they have become more visible and the sense of intrusion has also increased among the local population.

3.2 *Politics and Politicization*

Discrimination and intolerance against migrant workers affect more than just the migrant workers. There are political consequences, as such intolerant sentiments could be politicized. Ruhs points out that, when temporary foreign worker programmes lead to prolongation or increases in the number of workers that were initially unanticipated—what he calls bloating—this may also lead to the perception that the government has “lost control” over the size of the migrant worker population, inviting an immigration backlash.⁸⁹ Indeed, in Singapore, the Little India riot reinforced a perception among the local population that the government has permitted a seemingly uncontrolled inflow of foreign workers. This backlash is liable to be politicized and could adversely affect all foreign workers in the country and reduce or even eliminate the benefits of the migrant worker programme to the host country.⁹⁰

Immigration became particularly politicized in Singapore’s most recent general elections in 2012, with the result that the government has started to restrict immigration, including making it more difficult and expensive to employ migrant workers on work permits.⁹¹ The backlash stemmed from the increase in migrant workers, who became a scapegoat for an overwhelmed public transportation system, overcrowded public spaces, and depressing low-end pay.⁹² Opposition parties capitalized on rising discontent with the high rates of immigration, which the local population blames for raising the costs of living.⁹³ The main opposition party, the Workers’ Party, sought to present a more moderate perspective by repeatedly emphasizing that it is not anti-immigration but that their proposal was for Singapore to reduce its reliance on a foreign workforce, and for a more moderate pace of immigration.⁹⁴ This pace of immigration, it argues, should be accompanied by a similar or higher rate of development and maintenance of public infrastructure, like public transport networks, hospitals, and schools.⁹⁵ That may be so but, in arguing that Singapore should reduce its reliance on a foreign workforce and highlighting the overcrowding of public infrastructure, it inevitably holds out the migrant worker as the scapegoat for public discontent with the government. Indeed, the opposition did profit from the anti-immigrant sentiment that galvanized the electorate against the government in the last general elections.

Politicization of immigration is a common contributor to rising political conservatism.⁹⁶ Where immigration places significant stress upon a society’s social and economic structure, it becomes easy for politicians to exploit fears and prejudices among the local population, especially where there is little contact and integration between locals and migrants.

89. Ruhs (2002), pp. 27, 32.

90. *Ibid.*, p. 32.

91. Chun (2014).

92. Head (2013); Chun & Venkat (2013).

93. Lim (2011); *The Japan Times* (2013); see also Adam (2013).

94. Mokhtar (2014).

95. See e.g. The Workers’ Party (2013).

96. In her study of the determinants of the evolution of right-wing extremism in six Western European countries, Knigge finds that rising levels of immigration and public dissatisfaction with the political regime significantly facilitate right-wing extremism. Knigge (1998).

For instance, problems associated with the presence of more than two million migrants of Turkish descent became a key political issue in (then) West Germany in the 1980s.⁹⁷ Anti-immigration politicians (often barely veiling their racism) found it easy to blame foreign workers for the country's social and economic problems, accusing immigrants of depleting social security, overpopulating schools, and causing housing shortages and social unrest.⁹⁸ While it is easy to blame the immigrant, this often merely detracts policy-makers from addressing the real underlying issues. For example, blaming migrant workers for overcrowding belies the fact that no resources were channelled into expanding and improving the public infrastructure to keep pace with population and economic growth. Similarly, in discussing the guest worker programmes in Europe, because permanent immigration was not expected, states refused (or neglected) to take the necessary steps to provide the housing and social amenities needed for orderly settlement.⁹⁹ This, Ruhs points out, stems from the attempt of these guest worker policies to treat workers as purely economic beings, thereby failing to take into account their other human attributes and needs.¹⁰⁰

4. ARGUMENTS FOR RIGHTS AND INTEGRATION

There is a tendency for guest worker programmes like that of Singapore's work permit regime to assume that, as long as the workers are kept transient, their rights can be largely ignored and that there is no necessity to integrate them into society. This assumes that the interests and welfare of migrant workers are only minimally economically linked, but not socially connected to that of the host society. In fact, there appears to be an assumption that migrant workers could mostly be sequestered from the local population. In reality, the social interests of the migrant worker and his host are more intertwined than is commonly assumed. Physical sequestration is neither possible nor humane. Not only do migrant workers have a role in the public and social order, but there are also foundational questions about human rights and justice that any society has to address.

4.1 *Social Order Considerations*

About a year before the Little India riot, on November 26, 2012, Singaporeans were surprised when 171 bus drivers from China who were employed by the Singapore Mass Rapid Transit (SMRT) went on strike, complaining about unequal pay. According to their complaint, Chinese nationals received lower pay than Singaporean and Malaysian drivers in Singapore. They also objected to the living conditions in the workers' dormitories.¹⁰¹ The incident was extraordinary because labour strikes are extremely rare in Singapore. The last sanctioned labour strike in Singapore was in 1986.¹⁰² Under Singapore laws, trade unions must be registered and can only commence or organize a strike after obtaining the majority of

97. Jacoby (2003), pp. 1590–9.

98. See Castles (1986), p. 776; as Joppke observes, public debate in Germany often characterized Turkish residents as undesired and difficult. Joppke (1999).

99. Castles (1986), p. 776.

100. *Ibid.*

101. Neisloss (2013).

102. Trade unions and strikes are subject to procedural rules stipulated in the Trade Unions Act (Cap. 333, Rev. Ed. 2004) and Trade Disputes Act (Cap. 331, Rev. Ed. 2014).

votes from its members.¹⁰³ Workers in an industry considered an “essential service” were subject to more stringent rules. Public transportation is an “essential service” and workers have to give 14 days’ notice for any strike. Since the SMRT bus drivers did not provide any notice, their strike was considered illegal.¹⁰⁴

Twenty-nine of the striking drivers were immediately deported, and four were charged and convicted for instigating an “illegal” strike.¹⁰⁵ This is notwithstanding that some of their grievances were found to be legitimate. SMRT later conceded that dormitory conditions needed improvement. Although it asserted that the unequal pay for Chinese bus drivers was “fair,”¹⁰⁶ it reportedly implemented a new pay scheme after the strike which promises to evaluate and reward all bus drivers on a common set of performance indicators. Efforts were also made to improve communication channels between the company and the bus drivers.¹⁰⁷ Thus, for all intents and purposes, the strike achieved its aims. The bus strikes, like the Little India riot, brought to the fore some of the arguments that migrant worker advocates have been making for some time concerning the discriminatory and potentially exploitative effects of the current regulatory system.

The exclusionary aspects of the legal framework encourage social and economic discrimination against them. Where the law sanctions unequal rights, this often leads to unequal treatment and discrimination in society.¹⁰⁸ Residents including public authorities, employers, teachers, colleagues, and neighbours will be less inclined to treat migrant workers as equals, or give them a fair chance, or the necessary support in the process of integration, if they feel that the immigrant could easily be forced to leave the society again. There is a real risk that they will treat immigrants as second-class residents.¹⁰⁹ This in turn discourages migrant workers from trying to integrate into the host society. In contrast, when immigrants feel that their residence status is secure (even if only semi-permanent), they would have a greater impetus to integrate.¹¹⁰ As long as they fear that they can be removed from the country at any time, their efforts at integration will be hesitant or half-hearted, and they will continue to orientate their future plans towards their countries of origin.¹¹¹ It has been argued that this state of affairs could pose a public order risk for the country should migrant worker discontent reach a tipping point.

Furthermore, the presumption that migrant workers are unsuitable for inclusion in Singaporean society on the basis that they would not be able to provide adequate economic benefits to outweigh the possible social and economic costs to Singapore is a self-reinforcing one. The legal conditions that render their stay transient prevent them from obtaining better economic terms for their work. It is possible that they are kept at a depressed economic

103. See Trade Unions Act, s.27(1).

104. Essential service workers are subject to the Criminal Law (Temporary Provisions) Act (Cap. 67, Rev. Ed. 1985) and this includes public bus and air transport workers. Essential service workers have to give their employer 14 days’ notice of their intention to strike amongst other restrictions. Failure to do so renders the strike illegal. Anyone involved in an illegal strike can be fined up to S\$2,000 and/or jailed for up to a year under the Criminal Law (Temporary Provisions) Act.

105. Neisloss (2013).

106. *Ibid.*

107. This includes an annual wage supplement and a year-end annual variable bonus. Tan (2013b).

108. *Ibid.*, p. 8.

109. *Ibid.*, p. 7.

110. Groenendijk (2001), p. 7.

111. *Ibid.*, p. 7.

capacity precisely because they lack security of residence and other forms of legal protection. This renders them less able to provide greater economic and social benefits to the host society. Indeed, poor legal status has been identified as major factor in marginalization of immigrants within West German society, contributing to ethnic segregation and racism.¹¹² It is significant that many European countries with large guest worker programmes have reoriented their policies towards integration of immigrants.¹¹³

4.2 *A Human Rights Perspective*

The human rights framework to migration is a necessary counter to a purely developmentalist approach. A human rights approach emphasizes long-term protection of migrant workers' rights and values their personal autonomy and capacities to contribute to economic development. A failure to take a human rights approach has been said to give rise to a perspective of migration in purely economic terms, such that migrant workers may come to be regarded as commodities, rather than as individuals who are equally entitled to the full enjoyment of their human rights.¹¹⁴

Guidance can be taken from the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICMW), which is the most comprehensive treaty specifically addressing the human rights of migrant workers.¹¹⁵ The ICMW emphatically extends basic rights to migrants and fills in some gaps for migrant protection. It builds upon universal human rights guaranteed under existing human rights instruments, namely the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Elimination of all forms of Discrimination against Women (CEDAW), and the Convention Against Torture (CAT), and articulates them in ways which take into account the particular situation of migrant workers and their families. While Singapore is not party to the ICMW, the treaty nonetheless has normative valence and its provisions could serve as guidance on improving the rights and welfare of migrant workers.

Besides the ICMW, migrant workers are also protected under the eight International Labour Organization ("ILO") core conventions (against forced labour and child labour, and for freedom of association, and nondiscrimination). The ILO's position is that all labour standards apply to migrant workers in the workplace, regardless of their status. In addition to these conventions, the ILO Multilateral Framework on Labour Migration provides a non-binding but persuasive rights-based framework to labour migration with the objectives of promoting international co-operation, governance of migration, protection of migrant workers, and strengthening migration–development linkages.

Several of the restrictive provisions of Singapore's regulatory regime for unskilled or low-skilled workers would fall short of the ICMW's injunction for equality of treatment for migrant workers. For example, Article 54 of the convention guarantees migrant workers equality of treatment with nationals of the state of employment in respect of protection

112. Castles (1985), p. 533.

113. See generally Jacoby (2003).

114. International Labour Organization (2006), p. 4.

115. 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families ("ICMW"), at Article 2.

against dismissal, unemployment benefits, access to public work schemes intended to combat unemployment, and access to alternative employment in the event of loss of work or termination of other remunerated activity. Singapore's key legislation protecting the rights of employees is the Employment Act. While it applies to migrant workers, it excludes those involved in domestic work. Foreign domestic workers are thus not protected under the Employment Act. Furthermore, even though the Employment Act provides safeguards with respect to termination of employment, this has not provided effective protection for (non-domestic) migrant workers who are liable to have their work permit cancelled at any time by their employers. Under the work permit regime, termination of employment results in the immediate termination of the work permit, in which case the migrant worker must leave Singapore within seven days.¹¹⁶ This contrasts with the Employment Act, which prescribes longer termination notices for workers who have worked for more than two years, and covers work permit holders, which require payment of salary in lieu of notice.¹¹⁷

Another area in which Singapore's current regulatory framework does not meet the standards prescribed under the ICMW relates to family reunion. While the ICMW stops short of guaranteeing all migrant workers the right to family reunion, it does advocate states to:

... take measures that they deem appropriate and that fall within their competence to facilitate the reunification of migrant workers with their spouses or persons who have with the migrant worker a relationship that, according to applicable law, produces effects equivalent to marriage, as well as with their minor dependent unmarried children.¹¹⁸

This suggests that there could be restrictions on family reunion but not a blanket prohibition, which is the case in Singapore. Another aspect of Singapore's work permit regime that falls short of the international law standards is the lack of due process rights for migrant workers who face deportation. The ICMW does not prohibit expulsions in individual cases, but guarantees a process for appeal against any executive or administrative decision unless a judicial authority has reached a final decision.¹¹⁹ Similarly, under clause 33 of ILO Recommendation 151 and Article 9 of Convention 143, migrant workers are entitled to the right of appeal regarding any expulsion orders. These are some aspects of the law that are not only socially exclusionary, but that are also in need of reform to be consistent with international standards.¹²⁰

4.3 *Justice and Equality*

Besides social order and human rights considerations, there are more foundational criticisms against guest worker programmes like Singapore's work permit regime. Social theorists and philosophers have argued that guest worker programmes are fundamentally unjust and unequal because they require workers to give up crucially important rights. Guest workers

116. Ministry of Manpower (2014f).

117. See Employment Act, ss. 10, 11.

118. See Article 44 of the ICMW.

119. Article 22(4) of the ICMW states: "Except where a final decision is pronounced by a judicial authority, the person concerned shall have the right to submit the reason he or she should not be expelled and to have his or her case reviewed by the competent authority, unless compelling reasons of national security require otherwise. Pending such review, the person concerned shall have the right to seek a stay of the decision of expulsion."

120. It must be noted that the ICMW is limited by its commitment to the norms and structures of sovereign statehood; see Bosniak (1991).

are admitted to free citizens from hard and unpleasant work, but are denied the right to be treated as equal human beings and potential citizens. Michael Walzer characterizes this condition as akin to a family with live-in servants, which he considers to resemble tyranny.¹²¹ According to Walzer, it is politically unjust to lock guest or transient workers into an inferior position, in which the state exercises a pervasive and frightening power that shapes their lives and regulates their every move, keeping them disenfranchised and docile through the continuous threat of deportation.¹²² He thus argues that admitted immigrants must be set on the road to citizenship. In other words, they ought to be able to regard themselves as potential or future participants in politics, and be possessed of basic civil liberties.¹²³ Indeed, he argues, the principle of political justice requires that the processes of self-determination be open and equally open to all those men and women who live within the state's territory, work in the local economy, and are subject to local law.¹²⁴

Admittedly, not everyone agrees with this position. Anna Stilz observes that many who support guest worker programmes usually dismiss the moral challenge of restricted rights with two arguments: one from consent and one from benefit.¹²⁵ First, they point out that guest workers voluntarily contract to work and willingly accepted whatever rights restrictions they may be subject to.¹²⁶ Second, advocates usually emphasize that guest worker programmes are of great benefit to the workers who would otherwise end up working for much lower wages in their home countries or would simply remain unemployed.¹²⁷ On these bases, advocates argue that it is better to retain guest worker programmes than to abolish or modify them.

Indeed, an argument proffered against providing guest workers more benefits is the potential trade-off involved. According to Martin Ruhs and Philip Martin, requiring countries to offer low-skilled migrant workers more rights may lead to a decrease in the demand for the number of workers. They point out that countries with large numbers of low-skilled migrant workers offer them relatively few rights, while smaller numbers of migrants are typically associated with more rights. This shows a trade-off between numbers and rights, whereby there is an inverse relationship between the number and rights of migrants employed in low-skilled jobs in high-income countries.¹²⁸ According to Ruhs and Martin, more rights for migrants typically results in higher costs, which reduces the employer's demand for low-skilled labour.¹²⁹ Thus, they posit that guest worker programmes typically entail a choice between offering a generous package of rights and benefits to a very small number of workers or a more restricted package to a larger number.¹³⁰

There may well be a trade-off between numbers and rights, but refusing to grant immigrants a path to residency and citizenship has been argued to be fundamentally unjust and indeed inconsistent with liberal democratic ideals.¹³¹ This is especially where guest workers

121. Walzer (1983), p. 52.

122. *Ibid.*, p. 59.

123. *Ibid.*, p. 60.

124. *Ibid.*

125. See generally discussion in Stilz (2010), pp. 296–7.

126. *Ibid.*

127. *Ibid.*

128. Ruhs & Martin (2008), p. 251.

129. *Ibid.*

130. Stilz (2010), p. 296.

131. See e.g. Kymlicka (2001), p. 359; Walzer (1983).

have stayed for a sufficiently long period of time and thereby formed social ties in the host society. Joseph Carens, for example, argues that the formation of such social ties gives migrants a moral claim to full membership there. On Carens's view, it may be permissible to ask short-term residents to waive some rights (like the right to welfare benefits, to vote and run for office, or to be protected against deportation). But the longer their stay, the stronger their claim to membership becomes. As such, once someone has resided in a country for a sufficiently long period, say five years or more, he ought to be granted full citizenship.¹³²

While Singapore does not purport to be a liberal democracy, it may be subjected to certain reasonable standards. Even for advocates of the guest worker programme like Stilz, Singapore's work permit regime falls short of what would be considered just and acceptable. For Stilz, who argues that guest worker programmes could be partially defensible, there are nevertheless some baseline conditions that have to be met. She identifies three of them: first, that it must not restrict basic rights of personhood; second, that contracts that waive membership rights may be unconscionable under certain conditions, such as when the migrant's basic needs or membership in his home state are compromised; third, that restricted rights must not render workers exposed to the arbitrary power of employers and others in the receiving society.¹³³ Singapore's current regulatory regime falls short on this account. For instance, the condition that work permit holders need permission to marry a Singapore citizen or a permanent resident clearly restricts a basic right of personhood, which is the freedom to marry. Furthermore, as discussed in the previous section, the condition tying the migrant worker to a single employer renders them vulnerable to the arbitrary power of employers and others in Singapore.

5. RECOGNIZING THE MIGRANT WORKER AS A SUBJECT OF PROTECTION

It has been observed generally that migrant workers can best contribute to economic and social development in host countries (as well as source countries) when they enjoy decent working conditions, and when their fundamental human and labour rights are respected.¹³⁴ Indeed, there is now an increasing realization among the Singaporean leadership that socioeconomic gains and the protection of migrant rights are intertwined. While these fall short of integration, recent legal developments show improvements towards greater recognition for the rights and welfare of migrant workers. This is reflected in recent revisions to the law to better establish the rights of migrant workers and subject employers who fail in their duties to greater penalties. It has also been reflected in judicial cases arising from violations of migrant workers' rights. These reflect a shift in the law, giving migrant workers greater recognition as worthy subjects of the law.

5.1 *Employment of Foreign Manpower Act (EFMA) Amendments*

The 2012 amendments to the EFMA are the most significant to date. Interestingly, the stated objectives of the amendments intertwined the interests of the local population with that of

132. Carens (2008), p. 422.

133. Stilz (2010), pp. 296–7.

134. Wickramasekara (2008), p. 1248.

migrant workers. The Ministry of Manpower expressly stated that the amendments were aimed at bolstering their efforts at creating a “sustainable and inclusive growth and ensure Singaporeans remain at the core of our workforce” and to “stem the worst abuses against foreign workers.”¹³⁵ Part of the argument is that stricter regulations and heavier penalties are required to ensure that employers pay for the true costs of hiring foreign workers and to create level playing fields for law-abiding employers. Among the 2012 amendments are provisions that do better protect the rights of migrant workers. For instance, it creates new offences, which include criminalizing the collection of employment kickbacks from foreign workers¹³⁶ and illegally recovering employment costs from foreign workers.¹³⁷ There was also a proposal to require employers to send in-principle approval letters to work permit holders in their native languages before they depart for Singapore.¹³⁸ This presumably helps workers to be informed of their actual employment terms and to reduce their reliance on and exploitation by unscrupulous middlemen.¹³⁹ Furthermore, the new regulations make it clear that employers are responsible for and would bear the costs of the upkeep and maintenance of the migrant worker awaiting resolution of statutory claims for salary arrears under the Employment Act, or work injury compensation under the Work Injury Compensation Act.¹⁴⁰ This includes the provision of food and medical treatment. The employer is also responsible for ensuring that the worker has acceptable accommodation in Singapore.

These revisions follow a general regulatory trend towards clarifying and expanding employers’ responsibilities towards migrant workers. Although the revised regime improves the rights and working conditions of migrant workers, it has been criticized for not going far enough in protecting their rights. For instance, it maintains the starting point that migrant workers should be tied to a single employer. Consequently, the expansion of employers’ responsibilities and the imposition of stricter laws and penalties merely mitigate the conditions for exploitative conduct, but do not address the root of the problem. Indeed, the prioritization of the Singaporean workforce and its economy means that any advances on the rights of migrant workers remain subject to these interests, including the competing interests of employers. Thus, for instance, it has been pointed out that the employers generally oppose the single-employer regime because it would render them vulnerable to poaching by competitors. This, it is argued, would lead to the undesirable situation whereby an employer may incur costs in training the worker but loses him to a competitor.¹⁴¹

Nonetheless, the express interlinking of protecting migrant workers’ rights with that of the Singaporean workforce also signifies a positive shift. Migrant workers are no longer regarded as mere tools of production with no relation to the general population, but recognized as having rights, the violation of which affects the economy and the workforce. It has been observed elsewhere that the weakness and exploitation of the

135. Ministry of Manpower (2013).

136. Employment of Foreign Manpower Act, s.22A(1).

137. Employment of Foreign Manpower Act, s.25(4).

138. Ministry of Manpower (2013).

139. Singapore Parliamentary Reports (2012) (especially speech by Mr Tan Chuan-Jin, Acting Minister for Manpower and Senior Minister of State for National Development).

140. Employment of Foreign Manpower (Work Passes) Regulations 2012, at Fourth Schedule, Part III, reg. 16.

141. This of course begs the question of why the employer could not offer better terms of employment in order to retain the worker. After all, this is a business risk that the employer faces with non-migrant workers.

migrant workers in the labour market is harmful not only to them, but also often to local workers and unions.¹⁴²

5.2 Judicial Pronouncements

Another notable development took the form of a 2012 High Court case where the court made important judicial pronouncements endorsing (to some extent) a rights approach to immigration in Singapore. In the 2012 case of *Lee Chiang Theng v. Public Prosecutor* ([2012] 1 SLR 751 (High Court), at para. 1), Justice V.K. Rajah signalled a clear judicial endorsement of migrant workers as worthy subjects of protection under the law. On the facts, the case is not exactly uncommon. An errant employer was charged under the EFMA for failing to provide acceptable accommodation for his foreign workers,¹⁴³ for failing to pay them salaries on time,¹⁴⁴ and for employing foreign workers without valid work permits.¹⁴⁵ Justice Rajah opened his judgment with this hard-hitting passage:

Some employers view the recruitment of unskilled workers as a purely commercial enterprise bereft of any serious responsibilities for these workers' well-being. *This is altogether wrong.* Foreign workers are unquestionably not chattel like slaves of less enlightened times. Like any other employees, they have *basic rights that must be strictly respected.*¹⁴⁶

This judicially underscores that migrant workers are juridical subjects with basic rights worthy to be protected. In emphasizing the need to protect migrant workers from exploitation, Justice V.K. Rajah laid down certain important principles concerning the meaning of employment. He noted that “[a] contract of employment with any employee, regardless of his origins, has at its core the creation of a sense of financial security, identity and self-worth.”¹⁴⁷ In addition, Justice Rajah noted how the current regulatory scheme makes migrant workers especially vulnerable. This in turn makes it even more important for the law to ensure that employers are strictly liable for failing to comply with their obligations towards migrant workers. Thus, Justice Rajah stated:

Unskilled foreign workers, in particular, cannot ordinarily seek alternative employment, often have difficulties communicating, are reliant on their employers for appropriate accommodation, have no financial safety net and are therefore especially vulnerable. They are, in a nutshell, entirely dependent on their employers for both their financial security and welfare. A cavalier failure by an employer to appreciate the serious responsibilities concerning these workers' welfare can have profoundly unpleasant consequences.¹⁴⁸

142. Castles (1986), p. 762.

143. Employment of Foreign Manpower Act, s.22(1)(a) read with s.20. Section 22(1)(a) prescribes: “Any person who (a) being an employer, a foreign employee or a self-employed foreigner to whom a work pass applies or had applied, contravenes any condition (other than a regulatory condition) of the work pass or in-principle approval of the application for the work pass; shall be guilty of an offence and shall be liable on conviction (i) in the case of an offence under paragraph (a), (b) or (c), to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 12 months or to both.” Section 20 is a general provision ascribing responsibility for offences by corporate bodies to its officers.

144. *Ibid.*

145. These are non-regulatory conditions set out in Employment of Foreign Manpower (Work Passes) Regulations 2012 (S569/2012), Fourth Schedule, Part III, s.5(1) read with s.20 of the EFMA.

146. *Lee Chiang Theng v. Public Prosecutor* [2012] 1 SLR 751 (High Court), at para. 1 (emphasis added) (hereafter, “*Lee Chiang Theng*”).

147. *Ibid.*, at para. 1.

148. *Ibid.*, at para. 1.

As Justice Rajah opined, an employer's obligations are non-delegable. Dereliction of duties, which causes harm or abuse to workers, would therefore attract custodial sentences.

This is a very significant judgment. It recognizes the vulnerabilities of the migrant worker, which in turn justifies providing them with more protection. Furthermore, in affirming their basic rights, and emphasizing their status as a contract-maker and an employee, the court treats them as dignified subjects of the law.

5.3 *Civil Society and Changing Employers' Mindset*

This increasing recognition that migrant workers' rights need to be better protected is largely a result of persistent and effective civil society mobilization in Singapore in the past two decades. As Koh and Soon observes, there has been an evolution in Singapore's civil society-to-state relationship over the years. In the 1980s, especially, government was seen as highly resistant to civil society. This has changed since the mid-1990s when the government started to demonstrate greater openness to citizen activism and civil society campaigns.¹⁴⁹ In fact, during this time, the government encouraged civil society and "active citizens" to take ownership of community issues and to use their resources to address them. It was also during this time that the government started consulting with civil society and stakeholders.¹⁵⁰ Migrant workers advocacy groups were among the more active and prominent actors in this liberalizing climate. The key organizations involved in migrant workers issues in Singapore are TWC2 and the Humanitarian Organization for Migrant Economics (HOME), both of which have played key roles in advocating for labour reforms benefiting migrant workers. For instance, the two organizations have been integral in pressuring the government to impose a legal requirement for a weekly rest day for foreign domestic workers. They have also been active in educating migrant workers and helping them enforce their rights against errant employers.

The slow evolution towards greater protection of migrant workers is further reflected in the changing attitudes of employers. Generally speaking, employers have an interest in maintaining structural conditions that would continue the availability of low-cost immigrant labour, and thereby perpetuate the conditions which render them vulnerable as subjects of human rights.¹⁵¹ Since employers have a higher status in the political and economic power structure of the country, the government often faces a dilemma in trying to balance the human rights and welfare of migrant workers, and to safeguard the interests of the employers. This is because employers tend to be voters, whereas migrant workers are not.¹⁵² This is not to say that there is necessarily collusion between the government and the employers and, indeed, evidence suggests otherwise. But, as in other immigration states, the protection of migrant workers' rights in Singapore is necessarily complicated by this power structure. Changing the attitudes of employers is therefore a key strategy in immigration reform. There is some evidence that employers are more aware of the interconnectedness of their economic interests with the welfare of their workers.

149. Koh & Soon (2013), p. 93.

150. *Ibid.*, p. 94.

151. Bustamante (2002), p. 351.

152. Note that Ruhs and Chang argue that it is fundamentally problematic to ask states to protect the rights of foreigners, since it devalues the meaning and content of citizenship, and can be a source of costs which policy-makers and citizens cannot realistically be expected to assume. Ruhs & Chang (2004), p. 95.

6. CONCLUSION

In a recent survey commissioned by the Ministry of Manpower (MOM) and the Migrant Workers Centre, it was found that more than 90% of foreign migrant workers said they were satisfied, or very satisfied, to work in Singapore.¹⁵³ About 92% said that they hoped to continue working here even after their current employment scheme.¹⁵⁴ Of the 930 surveyed, only 2.3% said they were dissatisfied or very dissatisfied.¹⁵⁵ These preliminary findings were released to show that the root cause of the December 8 riot in Little India was not foreign workers' systemic dissatisfaction with employment and living conditions here. That may well be the case. But, as this article tried to demonstrate, the key lesson from the Little India riot was that it shows that a neat delineation between the interests of the local population and the interests of the migrant worker population is simply not possible. The two interests are intertwined, economically and socially. Fostering migrant workers' harmonious integration in receiving societies is a condition for social cohesion, peace, and democracy.¹⁵⁶ Indeed, good practices in high-immigration countries not only involve improving their living and working conditions, but also include integration policies, which place emphasis on finding ways to overcome cultural differences in a pluralistic society through—*inter alia*—the extensive provision of language teaching.¹⁵⁷ Other good practices would include providing migrant workers with access to services as well as having strong political will to investigate and prosecute charges of exploitation.

While not directly causally linked, the Little India riot has raised serious questions about the viability and desirability of the current work permit scheme which socially excludes and economically discriminates against a significant proportion of the population. To regard work permit holders as transient and therefore neglect to attempt to integrate them into Singaporean society could be a risky policy to continue. While it is politically expedient to emphasize the interests of the local population over those of migrant workers, the truth of the matter is that these are not neatly differentiated interests, but are intertwined in many ways. The developmentalist assumptions underlying the current immigration regime may not best serve the country's economic and social interests in the long run.

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153. Salleh (2014).

154. *Ibid.*

155. *Ibid.*

156. Pécoud & Guchteneire (2006), p. 245.

157. International Labour Organization (2006), p. 11.

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