CHAPTER III

LEGISLATIVE PROTECTION FOR MIGRANT WORKERS

3.1 Introductory

Many labour legislations have been brought out by the conscientious policy-makers in order to improve the lot of working class of the citizenry, for instance, Employees' Compensation Legislation, Factories Law, Wages Laws, Employees' State Insurance Legislation, Industrial Dispute Laws, etc. are some of the pieces of legislation enacted for the care as well as welfare of the workers. Besides, these laws are also a step forward in ameliorating the conditions of the workers, avowing for the all round welfare of the workers as envisaged by the founding father of the Indian Constitution, i.e. prescribing, promoting, and achieving socio-economic justice for the weaker segments of the society.¹

In this chapter the researcher has made an attempt to discuss all the legislations providing protection to the migrant workers. In addition to above, the judicial trend regarding these legislations has also been incorporated.

¹ Gurdeep Singh, Migrant Workmen and the Law, p. 1.
3.2 Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979

Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 (hereinafter to be referred as ISMW Act) is a legislation, which aims at the benefit of migrant workmen who move from their parental place to migrant place in search of work. This legislation has been divided into seven chapters. All these chapters relate to the different aspects of migrant workmen. These chapters deal with registration of establishments employing inter-state migrant workmen, licensing of contractors, duties and obligations of contractors, wages, welfare and other facilities etc. to be provided to the migrant workmen. The total scheme of this legislation has been analysed and evaluated in the following pages. The researcher has made an attempt to discuss each and every provision of this legislation with the help of the rules attached to this legislation itself.

This Act came into force on 2\textsuperscript{nd} October, 1980.\textsuperscript{2} It extends to the whole of India, it applies to every establishment in which five or more inter-state migrant workmen (whether or not in addition to other workmen) are employed or who were employed on any day of the preceding twelve months and to every contractor who

employs or who employed five or more inter-state migrant workmen (whether or not in addition to other workmen) on any day of the preceding twelve months.³ In this way, it is essential to highlight here that the provisions of this Act will not be applicable on the establishments and contractors who employs or employed inter-state migrant workers and also to those establishments and contactors who employs or employed less than five inter-state migrant workmen on any day of the preceding one year.

Section 2(1) (e) of the Act, 1979 defines inter-state migrant workman as such:

"any person who is recruited by or through a contractor in one State under an agreement or other arrangement for employment in an establishment in another State, whether with or without the knowledge of the principle employer in relation to such establishment."

It's clear from the above definition that a workman who comes on his own for work in another State will not be covered under the definition. Likewise a workman who changes contractors after reaching the destination State for work within that State will be kept outside from the scope of this definition. In the same way a workman recruited

³. Sec. 1(4) of the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979.
directly by the principal employer will also remain outside from the perview of the definition.

So, the definition of "inter-state migrant workman" includes only those workmen who are recruited by a contractor or through a contractor. The other provisions of this Act have been discussed in the following pages.

3.2.1 Registration of Establishments Employing Inter-State Migrant Workmen

3.2.1.1 Appointment of Registering Officers

Chapter II of ISMW Act deals with the registration of establishments which employ inter-state migrant workmen. For this purpose section 3 of this Act deals with the appointment of the registering officers. These registering officers are appointed by the appropriate Government by way of an order notified in official gazette. Accordingly, the appropriate Government may, by order notify in the official gazette, —

(a) appoint such person, being officers of Government, as it thinks fit to be registering officers for the purposes of this chapter; and

(b) define the limits, within which a registering officer shall exercise the powers conferred on him by or under this Act.

After going through the above provision it is clear that the registering officers being appointed for the purpose
must be the officers of the Government. It is essential to highlight here that section 3 is quite silent regarding the qualifications and other experiences of the registering officers.

3.2.1.2 Registration of Certain Establishments

The Act lays down the procedure for the registration of certain establishments.4 Rule 3 of the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Central Rules, 1980 (hereinafter to be referred as the ISMCR) lays down the procedure for making an application for registration of establishment. Rule 3 provides as under:

(1) The application for registration of an establishment shall be made in triplicate in Form I to the registering officer of the area in which the establishment sought to be registered is located.

(2) The application shall be accompanied by a crossed demand draft showing payment of the fees for the registration of the establishment.

(3) The application shall be either personally delivered to the registering officer or sent to him by registered post.

(4) On receipt of the application, the registering officer shall, after noting thereon the date of receipt by him

of the application, give an acknowledgment to the applicant.

Sub-section 1 of section 4 of ISMW Act provides that every principal employer of an establishment to which this Act applies shall, within such period as the appropriate Government may, by notification in the official gazette, fix in this behalf with respect to establishments generally or with respect to any class of them, make an application to the registering officer, in such form and manner and on payment of such fees as may be prescribed, for the registration of the establishment. It is further provided that the registering officer may entertain any such application for registration after the expiry of the period fixed in that behalf, if the registering officer is satisfied that the applicant was prevented by sufficient cause from making the application in time.

The time limit for making an application to the registering officer shall be fixed by the appropriate Government. It is necessary that the application for registration of establishment must be accompanied by the fees prescribed for this purpose. The registering officer has also the power to condone the delay made in making an application for registration if the registering officer is satisfied that the applicant was prevented by sufficient cause from making the application within the stipulated
time. Further, within one month after the receipt of an application for registration under sub-section (1), the registering officer shall,—

(a) if the application is complete in all respects, register the establishment and issue to the principal employer of the establishment a certificate of registration in the prescribed form; and

(b) if the application is not so complete, return the application to the principal employer of the establishment.

In case the registering officer issue a certificate of registration, it should be issued according to Rule 4 of ISMWCR. Rule 4 provides as under:

(1) Where the registering officer registers the establishment, he shall issue to the principal employer a certificate of registration in Form II.

(2) The registering officer shall maintain a register in Form III showing the particulars of the establishment in relation to which certificates of registration are issued by him.

(3) If, in relation to an establishment, there is any change in the particulars specified in the certificate of registration, the principal employer of the establishment shall intimate to the registration officer, within thirty days from the date when such
change takes place, the particulars of, and the reasons for, such change.

Section 4 (3) provides that where within a period of one month after the receipt of an application for registration of an establishment under sub-section (1), the registering officer does not grant under clause (a) of sub-section (2) the certificate of registration applied for and does not return the application under clause (b) of that sub-section, the registering officer shall within fifteen days of the receipt of an application in this behalf, from the principal employer, register the establishment and issue to the principal employer a certificate of registration in the prescribed form. It implies that an application for registration of an establishment must be moved by the principal employer thereof within such period as the appropriate Government may, by notification in the official gazette, fix in that behalf and in such form and manner and on payment of such fees as may be prescribed.

The circumstances in which application for registration may be dismissed have been discussed under Rule 5 of ISMWR, 1980. The circumstances are:

(1) If any application for registration is not complete, in all respects, the registering officer shall require the principal employer to amend the application so as to make it complete in all respects.
(2) If the principal employer, on being required by registering officer to amend his application for registration omits or fails to do so, the registering officer shall reject the application for registration.

### 3.2.1.3 Revocation of Registration

Section 5 of the Act deals with the revocation of registration in certain cases. It provides that if the registering officer is satisfied either on a reference made to him in this behalf or otherwise, that the registration of any establishment has been obtained by misrepresentation or suppression of any material fact or that for any other reason, the registration has become useless or ineffective and, therefore, requires to be revoked, the registering officer may, after giving an opportunity to the principal employer of the establishment to be heard and with the previous approval of the appropriate Government, revoke by order in writing the registration and communicate the order to the principal employer.

An analysis of this provision reveals that the registration certificate obtained by misrepresentation or suppression of any material fact or for any other reason may be revoked by the registering officer but while doing so the registering officer is bound to give an opportunity to the principal of the establishment to be heard. At the same time prior approval of the Government must be sought by
the registering officer. The proviso attached to this section provides that where the registering officer considers it necessary so to do for any special reason, he may, pending such revocation, by order suspend the operation of the certificate of registration for such period as may be specified in the order and serve, by registered post, such order along with a statement of the reasons on the principal employer and such order shall take effect on the date on which such service is effected.

The certificate of registration may be amended by the registering officer. Accordingly,

(1) Where on receipt of the intimation under sub-rule (3) of rule 4, the registering officer is satisfied that an amount higher than the amount, which has been paid by the principal employer as fees for the registration of the establishment is payable, he shall require such principal employer to deposit a sum which, together with the amount already paid by such principal employer, would be equal to such higher amount of fees payable for the registration of the establishment and to produce showing such deposit.

(2) Where, on receipt of the intimation referred to in sub rule (3) of particulars of the establishment, as entered in the register in Form III, he shall amend the said register and record therein the change thus occurred:
Provided that no such amendment shall affect anything done or any action taken or any right, obligation or liability acquired or incurred before such amendment:

Provided further that the registering officer shall not carry out any amendment in the register in Form III unless the appropriate fees have been deposited by the principal employer.

3.2.1.4 Prohibition against Employment of Inter-State Migrant Workmen without Registration

Employment of Inter-state migrant workmen without registration is prohibited. No principal employer of an establishment to which this Act applied shall employ inter-state migrant workmen in the establishment unless a certificate of registration in respect of such establishment issued under this Act is in force.

The proviso attached to section 6 provides that nothing in this section shall apply to any establishment in respect of which an application for registration made within the period fixed, whether originally or on extension under sub-section (1) of section 4 is pending before a registering officer and for the purposes of this proviso, an application to which the provisions of sub-section (3) of section 4 apply shall be deemed to be pending before the registering officer concerned till the certificate of

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registration is issued in accordance with the provisions of that sub-section.

Employment of inter-state migrant workmen in any establishment is prohibited unless it is duly registered under this Act.

Contravention of section 6 is punishable under section 25 of this Act. The punishment may extend up to the imprisonment for a term, which may extend to one year or with fine which may extend to one thousand rupees or with both. Keeping in view the utter exploitation of migrant workers it is the need of the hour that the punishment may be increased in terms of imprisonment and the fine.

3.2.2 Grant of License to Contractors

Every contractor who proposes to recruit or employ migrant workmen will be required to obtain a license from the authority provided under the Act. Contractor in relation to an establishment means a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, by the employment of workmen or to supply workmen to the establishment, and includes a sub-contractor, Khatedar, Sardar, agent or any other person, by whatever name called, who recruits or employs workmen.
3.3.2.1 Appointment of Licensing Officers

The appropriate Government may by order notified in official gazette –

(a) appoint such persons, being officers of Government, as it thinks fit to be licensing officers for the purposes of this Chapter; and
(b) define the limits, within which a licensing officer shall exercise the jurisdiction and powers conferred on licensing officers by or under this Act.

The appropriate Government may by notification in the official gazette appoint licensing officers and define their respective limits of jurisdiction and powers under this Act.

3.3.2.2 Licensing of Contractors

Every contractor who wants to employ migrant workmen is required to obtain a license from the appropriate Government. Section 8 of ISMW Act, 1979 deals with licensing of contractors. Sub-section (1) of section 8 provides that with effect from such date as the appropriate Government may by notification in official gazette, appoint, no contractor to whom this Act applies shall:

(a) recruit any person in a State for the purpose of employing him in any establishment situated in
another State, except under and in accordance with a license issued in that behalf,

(i) if such establishment is an establishment referred to in sub-clause (i) of clause (a) of sub-section (1) of section 2, by the licensing officer appointed by the Central Government who has jurisdiction in relation to the area wherein the recruitment is made;

(ii) if such establishment is an establishment referred to in sub-clause (ii) of clause (a) of sub-section (1) of section 2, by the licensing officer appointed by the State Government who has jurisdiction in relation to the area wherein the recruitment is made.

b) employ as workmen for the execution of any work in any establishment in any State, persons from another State (whether or not in addition to other workmen) except under and in accordance with a license issued in that behalf,—

(i) if such establishment is an establishment referred to in sub-clause (i) of clause (a) of sub-section (1) of section 2, by the licensing officer appointed by the Central Government who has jurisdiction in relation
to the area wherein the establishment is situated,

(ii) if such establishment is an establishment referred to in sub-clause (ii) of clause (a) of sub-section (1) of section 2, by the licensing officer appointed by the State Government who has jurisdiction in relation to the area wherein the establishment is situated.

The licensing officer may impose any condition while giving license to the contractor. But it is desired that if any such condition is imposed it should be reasonable and justified.

Subject to the provisions of this Act, a license under sub-section (1) may contain such conditions including, in particular, the terms and conditions of the agreement or other arrangement under which the workmen will be recruited, the remuneration payable, hours of work, fixation of wages and other essential amenities in respect of the inter-state migrant workmen, as the appropriate Government may deem fit to impose in accordance with the rules, if any, made under section 35 and shall be issued on payment of such fees as may be prescribed.\textsuperscript{6}

The proviso attached to sub-section 2 again provides that if for any special reason, the licensing officer is

\textsuperscript{6} Section 8(2), ISMW Act, 1979.
satisfied that it is necessary to require a person who has applied for or who has been issued a license to furnish any security for the dire performance of the conditions of the license, he may, after communicating such reasons to such person and giving him an opportunity to represent his case, determine in accordance with the rules made in this behalf the security which shall be furnished by such person for obtaining or, as the case may be, for continuing to hold the license.

Therefore, the licensing officer has the power to require the contractor to furnish security for the due performance of the conditions of license. But, while doing so licensing officer is found to give an opportunity to the contractor to present his case. This section nowhere mentions the quantum of security to be furnished in such situation. However, sub-section 3 of section 8 further clarifies that point. The security which may be required to be furnished under the proviso to sub-section (2) shall be reasonable and the rules for the purposes of the said proviso shall, on the basis of the number of workmen employed, the wages payable to them, the facilities which shall be afforded to them and other relevant factors provide for the norms with reference to which such security may be determined.  

Certain factors mentioned in sub-section 3 are required to be taken into account while fixing the amount of security for granting license to the contractor. In addition to the above stated factors mentioned in Rule 10, some other relevant factors may also be considered for this purpose.

Rule 7 of ISMWCR, 1980 lays down a procedure for making an application for seeking the license by the contractor. It provides that
(1) Every application by a contractor for the grant of a license for recruiting a person under clause (a) of sub-section (1) of section 8 shall be made in triplicate in Form IV to the licensing officer having jurisdiction in relation to the area wherein the recruitment is made.
(2) Every application by a contractor for employing a migrant workman under clause (b) of sub-section (1) of section 8 shall be made in Form V to the licensing officer having jurisdiction in relation to the area wherein the establishment is situated.
(3) (i) Every application for the grant of a license under sub-rule (1) or sub-rule (2) shall be accompanied by a certificate of the principal employer in Form IV to the effect that he undertakes to be bound by all the provisions of the Act and the rules made thereunder so far as they are applicable to him in respect of the recruitment or
employment of the migrant workmen, in respect of which the contractor is making the application.

(ii) Every such application shall be either personally delivered to the licensing officer concerned or sent to him by registered post.

(4) On receipt of the application referred to in sub-rule (1) or sub-rule (2), the Licencing Officer concerned shall, after noting thereon the date of receipt of the application, grant an acknowledgment to the applicant.

(5) Every application referred to in sub-rule (1) shall also be accompanied by the receipt obtained as required by rule 20.

3.3.2.3 Grant of Licenses

Section 9 of ISMW Act, 1979 deals with the grant of licenses. Accordingly,

(1) Every application for the grant of a license under sub-section (1) of section 8 shall be made in the prescribed form and shall contain the particulars regarding the location of the establishment, the nature of process, operation or work for which- inter-state migrant workmen are to be employed and such other particulars as may be prescribed.

(2) The licensing officer may make such investigation in respect of the application received under sub-section (1)
and in making any such investigation, the licensing officer shall follow such procedure as may be prescribed.

(3) A license granted under section 8, shall be valid for the period specified therein and may be renewed from time to time for such period and in payment of such fees and on such conditions as may be prescribed.

The licensing officer may investigate in respect of an application by following such procedure as may be prescribed.

The license once granted shall not remain in force for all the times to come but it shall be renewed from time to time for such period and on payment of such fees as may be prescribed. While granting or refusing a license, the licensing officer shall take the following matters into account, namely,\(^8\)

(a) Whether the applicant –

(i) is a minor, or

(ii) is a unsound mind and stands so declared by a competent court, or

(iii) is an undischarged insolvent, or

(iv) has been convicted at any time during the period of five years immediately preceding the date of application, of an offence which,

\(^8\) Rule 8, ISMWC, 1980.
in the opinion of the Central Government involves moral turpitude;

(b) whether any order had been made in respect of the applicant under sub-section 1 of section 10, and, if so, whether a period of three years has elapsed from the date of that order.

(c) Whether the fees for the application has been deposited at the rates specified in Rule 12, and

(d) Whether security, if necessary has been deposited by the applicant at the rates specified in sub-rule 1 of Rule 10.

Rule 14 of ISMWCR, 1980 lays down the method for renewal of the licenses. Accordingly,

(1) Every contractor may apply to the licensing officer for renewal of the license.

(2) The application shall be in Form IX in triplicate and shall be made not less than thirty days before the date on which the license expires, and if the application is so made the license shall be deemed to have been renewed until such date when the renewed license is issued.

(3) The fees chargeable for renewal of the license shall be same as for the grant thereof:

Provided that if the application for renewal is not received within the time specified in sub-rule (2), a fee of
twenty five per-cent in excess of the fee ordinarily payable for the license shall be payable for such renewal:

Provided further that in case where the licensing officer is satisfied that the delay in submission of the application is due to unavoidable circumstances beyond the control of the contractor, he may reduce or remit as he deems fit the payment of such excess fee.

3.3.2.4 Revocation, Suspension and Amendment of Licenses

The license once granted to the contractor is subject to revocation, suspension and amendment. According to section 10(1), if the licensing officer is satisfied, either on a reference made to him in this behalf or otherwise, that—

(a) a license granted under section 8 has been obtained by misrepresentation or suppression of any material fact, or

(b) the holder of a license has, without reasonable cause, failed to comply with the conditions subject to which the license has been granted or has contravened any of the provisions of this Act or the rules made thereunder,

then, without prejudice to any other penalty to which the holder of the license may be liable under this Act, the licensing officer may, after giving the holder of the license

an opportunity to be heard, by order in writing revoke the license or forfeit the security furnished by him under the proviso to sub-section (2) of section 8 or any part thereof and communicate the order to the holder of the license.

But while doing so the licensing officer must give an opportunity to the license holder of being heard. Violation of this condition is contrary to the principle of natural justice. The license once granted can be revoked, suspended or amended at any subsequent point of time. But, the licensing officer is bound to communicate the reasons of revocation, suspension or amendment of the license to the license holder. The proviso attached to sub-section provides that where the licensing officer considers it necessary so to do for any special reasons, he may, pending such revocation or forfeiture, by order, suspend the operation of the license for such period as may be specified in the order and serve, by registered post, such order along with a statement of the reasons on the holder of the license and such order shall take effect on the date on which such service is effected.

Rule 13 of ISMWCR, 1980 deals with the procedure for the amendment of the license. It provides that
(1) A license issued under rule 11 or renewed under rule 15 may, for good and sufficient reasons be amended by the licensing officer.
(2) The contractor who desires to have to license amended shall submit to the licensing officer an application stating the nature of amendment and reasons therefore.

(3) (i) If the licensing officer allows the application, he shall require the applicant to furnish a crossed demand draft for the amount if any, by which the fees that would have been payable if the license had been originally issued in the amended form exceeds the fee originally paid for the license;

(ii) on the applicant furnishing the requisite receipt, the license shall be amended according to the orders of the licensing officer.

(4) Where the application for amendment is refused, the licensing officer shall record the reasons for such refusal and communicate the same to the applicant.

### 3.3.2.5 Appeal

The Act lays down a procedure for making an appeal against an order passed under section 4, 5 and 10.\(^\text{10}\) Accordingly, any person aggrieved by an order made under section 4, section 5, section 8 or section 10 may, within thirty days from the date on which the order is communicated to him prefer an appeal to an appellate officer who shall be a person nominated in this behalf by the appropriate Government:

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\(^\text{10}\) Section 11, ISMW Act, 1979.
Provided that the appellate officer may entertain the appeal after the expiry of the said period of thirty days, if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

The limitation period for making an appeal is 30 days from the date on which the order is communicated to the appellant.

However, according to the proviso attached to sub-section (1) of section 10, the appeal may be entertained after the expiry of 30 days, if, the appellant is satisfied that because of sufficient reasons the appeal couldn't be preferred within the limitation period of 30 days. While disposing of the appeal the appellate officer is bound to give an opportunity to the appellant of being heard and he shall dispose of the appeal as soon as possible. It is essential to highlight here that section 11 does not lay down a time limit for disposing of the appeal by the appellate authority. Therefore, it is suggested that instead of using these words "as expeditiously as possible" a time limit should be laid down for this purpose.

3.2.3 **Duties and Obligations of Contractors**

3.2.3.1 **Duties of Contractors**

The duties and obligations of contractors have been laid down under section 12 of ISMW Act, 1979. This section provides that
(1) It shall be the duty of every contractor—

(a) to furnish such particulars and in such form as may be prescribed, to the specified authority in the State from which an inter-state migrant workman is recruited and in the State in which such workman is employed, within fifteen days from the date of recruitment, or, as the case may be, the date of employment, and where any change occurs in any of the particulars so furnished, such change shall be notified to the specified authorities of both the States;

(b) to issue to every inter-state migrant workman, a pass book affixed with a passport size photograph of the workman and indicating in Hindi and English languages, and where the language of the workman is not Hindi or English, also in the language of the workman,—

(i) the name and place of the establishment wherein the workman is employed;

(ii) the period of employment;

(iii) the proposed rates and modes of payment of wages;
(iv) the displacement allowance payable;
(v) the return fare payable to the workman on the expiry of the period of his employment and in such contingencies as may be prescribed and in such other contingencies as may be specified in the contract of employment;
(vi) deductions made; and
(vii) such other particulars as may be proscribed.

It is also the duty of the contractor to furnish in respect of every inter-state migrant workmen who ceases to be employed, a return in such from and in such manner as may be prescribed, to the specified authority in the state from which he is recruited and in the State in which he is employed, which shall include a declaration that all the wages and other dues payable to the workman and the fare for the return journey back to his State have been paid.

It implies that a declaration to the effect that all the wages and other dues payable to the workman have been paid is a must. In addition to it the contractor shall maintain the passbook referred to in sub-section 1 up to date and cause it to be retained with the inter-state migrant workman concerned.
The ISMWC, 1980 also contains the duties of the contractors also. It provides that

1) Every contractor shall furnish to the specified authorities the particulars regarding recruiting and employment of migrant workmen in Form X.

2) The particulars shall be either personally delivered by the contractor to the concerned specified authorities or sent to them by registered post.11

Further, the contractor shall pay to the migrant workman the fare from the place of employment to the place of residence in the home State of the migrant workman on the expiry of the period of employment and on his—

(a) termination of service before the expiry of the period of employment and also for any reason whatsoever;

(b) being incapacitated for further employments on accounts of injury or continued ill-health duly certified as such by a registered medical practitioner;

(c) cessation of work in the establishments which is not due to any fault on the part of the migrant workman; and

(d) resignation from service on account of non-fulfilment of terms and conditions of his employment by the contractor.\(^\text{12}\)

It is also provided that

(1) In the pass book referred to in clause (4) sub-section (1) of section 12, the following additional particulars shall be indicated namely:—

(a) the date of recruitment.
(b) the date of employment;
(c) total attendance, unit of work done (in respect of piece-rated migrant workman), total wages earned, deductions if any made, net amount paid, the signature of contractor or his duly authorised representative with date; and (These entries shall be made separately in respect of each wage period within three days from the date of payment.)
(d) name and address of the next of the kins of migrant workman.

(2) In case of fatal accident of serious bodily injury to any migrant workman, contractor shall immediately send telegrams to the specified authorities of both the States and also the next of the kins of the migrant workman intimating death or the nature of serious bodily injury

\(^{12}\) Rule 22, ISMWCR, 1980.
sustained by the migrant workman, as the case may be, date, place and nature of accident. The contractor shall further send written report to the specified authorities concerned and the next of the kins of the migrant workman, under mentioned particulars by registered post within 24 hours of the occurrence of the accident:

(i) Name of the migrant workman;
(ii) Date, of place and nature of accident;
(iii) Condition of the migrant workman (if alive);
(iv) Action taken by the contractor/ principal employer;
(v) Remarks.

(3) If the contractor fails to send the telegraphic intimation and/or written report as required under sub-rule (2), the principal employer shall comply with the requirements of sub- rule (2) as early as possible but in any case not later than 48 hours of the time of occurrence of the accident.\(^{13}\)

According to Rule 24 every contractor shall furnish a return regarding migrant workman who have ceased to be employed in Form XI to the specified authorities concerned either personally or by registered post so as to reach them not later than 15 days from the date of migrant workman ceases to be employed. Contravention of the above stated rules will lead to punishment under section 26 of the Act.

\(^{13}\) Rule 23, ISMWCR, 1980.
3.2.4 Wages, Welfare and other facilities to be provided to Inter-State Migrant Workmen

Section 13 to section 19 of the ISMW Act, 1979 deal with the wages, welfare and other facilities to be provided to inter-state migrant workmen. All these sections have been discussed comprehensively in the following pages.

3.2.4.1 Wages, Rates and Other Conditions of Service of Inter-State Migrant Workmen

Section 13 of ISMW Act, 1979 deal's with the wages rates and other conditions of service of inter-state migrant workmen. It provides that

(1) The wage rates, holidays, hours of work and other conditions of service of an inter-state migrant workman shall,—

(a) in a case where such workman performs in any establishment, the same or similar kind of work as is being performed by any other workman in that establishment, be the same as those applicable to such other workman; and

(b) in any other case, be such as may be prescribed by the appropriate Government: -

Provided that an inter-state migrant workman shall in no case be paid less than the wages fixed under the Minimum Wages Act, 1948.
(2) Notwithstanding anything contained in any other law for the time being in force, wages payable to an inter-state migrant workman under this section shall be paid in cash.

An inter-state migrant workman shall in no case be paid less than the wages fixed under the Minimum Wages Act, 1948. Wages payable to an inter-state migrant workman, under this section shall be paid in ‘cash’ and not in any other manner/form.

An analysis of the above stated provision reveals that the Minimum Wages Act, 1948 shall also be applied upon the inter-state migrant workmen.

3.2.4.2 Displacement Allowance

The Migrant workmen are entitled to get displacement allowance.\textsuperscript{14} There shall be paid by the contractor to every inter-state migrant workman at the time of recruitment, a displacement allowance equal to fifty per cent of the monthly wages payable to him or seventy-five rupees, whichever is higher. The amount paid to a workman as displacement allowance under sub-section (1) shall not be refundable and shall be in addition to the wages or other amount payable to him.

Every inter-state migrant workman is entitled to a displacement allowance at the time of recruitment, which may be either 75 rupees or half of the monthly wages

\textsuperscript{14} Section 14, ISMW Act, 1979.
payable to him, whichever is higher. It is also made clear by section 14 that the displacement allowance shall not be refundable and shall be in addition to the wages or other amount payable to him.

3.2.4.3 Journey Allowance etc.

Every migrant workman is entitled for journey allowance.\(^\text{15}\)

A Journey allowance of a sum not less than fare from the place of residence of the inter-state migrant workman in his State to the place of work in the other State shall be payable by the contractor to the workman, both for the outward and return journeys and such workman shall be entitled to payment of wages during the period of such journeys as if he were on duty.

Every inter-state migrant workman is entitled to payment of wages during the period of journey’s on duty and is also entitled to journey allowance for outward and return journeys from the place of residence in his State to the place of work in the other State.

3.2.4.4 Other Facilities

The Act confers a duty upon the contractor to provide to the migrant workmen some other facilities.\(^\text{16}\)

\(^{-}\text{15}\). Section 15, ISMW Act, 1979.
\(^{-}\text{16}\). Section 16, ISMW Act, 1979.
It shall be the duty of every contractor employing inter-state migrant workmen in connection with the work of an establishment to which this Act applies,—

(a) to ensure regular payment of wages to such workmen;

(b) to ensure equal pay for equal work irrespective of sex;

(c) to ensure suitable conditions of work to such workmen having regard to the fact that they are required to work in a State different from their own State;

(d) to provide and maintain suitable residential accommodation to such workmen during the period of their employment;

(e) to provide the prescribed medical facilities to the workmen, free of charge;

(f) to provide such protective clothing to the workmen as may be prescribed; and

(g) in case of fatal accident or serious bodily injury to any such workman, to report to the specified authorities of both the States and also the next of kins of the workman.

An analysis of the above stated provisions clearly indicates that the Equal Remuneration Act, 1976 shall also
be applied upon the migrant workmen. Consequently they are entitled to equal pay for equal work irrespective of Sex.

It is essential to highlight here that regular payment of wages, equal pay for equal work and suitable conditions of work shall be provided by the principal employer. But, it is the duty of the contractor to ensure that all the above stated three provisions are fulfilled in their true letter and spirit. However, in case of failure on the part of principal employer to provide the above stated facilities, it is suggested that the contractor should be statutorily bound to provide the above stated facilities and should have the right to be reimbursed from the principal employer subsequently.

So far as the medical facilities are concerned, Rule 37 of ISMWCR, 1980 provides that
(1) The contractor shall ensure provision of suitable and adequate medical facilities for outdoor treatment to the migrant workman free of cost for treatment of any ailment from which the migrant workman or any member of his family may suffer during his employment in the establishment or to meet any preventive measure against epidemic or any virus infection. Whenever any medicine is purchased by a migrant workman from market on the basis of the prescription issued by any Doctor provided by the contractor or the principal employer, as the case may be,
or any registered medical practitioner, the cost of such medicine (including the fee upto Rs. 10 per consultation), shall be reimbursed by the contractor to the migrant workman concerned within a period of seven days from the date of presentation of the bill by the migrant workman.

(2) In the event of migrant workman or any of his family members suffering from any ailment requiring hospitalisation during his employment in the establishment, the contractor shall promptly arrange for the hospitalisation of the migrant workman or the concerned member of his family. The contractor shall bear all expenses on treatment, hospital charges (including diet), if any, and travel expenses for the patient from the place of his/her residence to the hospital and back.

(3) Every contractor shall provide and maintain so as to be readily accessible during all working hours first-aid boxes at the rate of not less than one box for one hundred and fifty workmen or part thereof.

(4) The first-aid box shall be distinctly marked with a Red Cross on a white ground and shall contain the following equipment, namely:—

(a) for the establishments in which number of migrant workmen employed does not exceed fifty, each first-aid box shall contain the following equipment:—
(i) 6 small sterilized dressings;
(ii) 3 medium size sterilized dressings;
(iii) 3 large size sterilized dressings;
(iv) 3 large sterilized burn dressings;
(v) 1 (30 ml.) bottle containing a two per cent alcoholic solution of iodine;
(vi) 1 (30 ml.) bottle containing salvolatile having the dose and mode of administration indicated on the label;
(vii) 1 snake-bite lancet;
(viii) 1 (30 gms.) bottle of potassium permanganate crystals;
(ix) 1 pair scissors;
(x) 1 copy of the first-aid leaflet issued by the Director- General, Factory Advice Service and Labour Institute Government of India;
(xi) a bottle containing 100 tablets (each of 5 grains) of aspirin.
(xii) ointment for burns; and
(xiii) a bottle of suitable surgical antiseptic solution.

(b) For establishment in which the number of migrant workmen exceed fifty, each first-aid box shall contain the following equipment:—

(i) 12 small sterilized dressings;
(ii) 6 medium size sterilized dressings,
(iii) 6 large size sterilized dressings,
(iv) 6 large sterilized burn dressings,
(v) 6 (15 gms.) packets sterilized cotton wool;
(vi) 1 (80 ml.) bottle containing a two per cent alcoholic solution of iodine;
(vii) 1 (60 ml.) bottle containing salvolatile having the dose and mode of administration indicated on the label;
(viii) 1 roll of adhesive plaster;
(ix) 1 snake-bite lancet;
(x) 1 (30 gms.) bottle of potassium permanganate crystals;
(xi) 1 pair scissors;
(xii) 1 copy of the first-aid leaflet issued by the Director- General, Factory Advice Service and Labour Institute Government of India;
(xiii) a bottle containing 100 tablets (each of 5 grains) of aspirin.
(xiv) ointment for burns; and
(xv) a bottle of suitable surgical antiseptic solution.

(5) Adequate arrangements shall be made for immediate recoupment when necessary.

(6) Nothing except the contents mentioned in sub-rule (4) shall be kept in the first-aid box.
(7) The first-aid box shall be in charge of a responsible person who shall always be readily available during the working hours of the establishment.

(8) The person in-charge of the first-aid box shall be a person trained in first aid treatment, in establishments where the number of migrant workmen is one and fifty or more.

The contractor shall provide to every migrant workman where the temperature falls below 20 degree centigrade, protective clothing consisting of one woollen coat and one woollen trousers one in two years.

The proviso provides that where the temperature falls below 5 degree centigrade an woollen overcoat shall also be provided to the migrant workmen once in three years.

The protective clothing shall be provided by the contractor to every migrant workman before onset of winter season in the area where the establishment is located or on the 30th day of September, whichever is earlier.17

The contractor shall provide sufficient quantity of wholesome drinking water, sufficient number of sanitary latrines and urinals, washing facilities for the migrant workmen at the establishment in the case of existing establishments, within seven days of commencement of these rules, and in case of new establishment, within seven

days of the commencement of employment of migrant workmen therein.

If any of the facilities is not provided by the contractor within the specified period, the same shall be provided by the principal employer within seven days of the expiry of the period specified in sub-rule 1.18

In every place where migrant workmen are required to halt at night in connection with the working of the establishment and in which employment of migrant workmen is likely to continue for three months or more, the contractor shall provide and maintain rest rooms or other suitable alternatives accommodation within fifteen days of the coming into force of the rules in case of the existing establishments and within fifteen days of the commencement of the employment of migrant workmen in the case of new establishments. If the amenity is not provided by the contractor within the specified period, the principal employer shall provide the same within a period of fifteen days of the expiry of the period specified in sub-rule (l). Separate rooms shall be provided for female migrant workmen. Effective and suitable provisions shall be made in every room for securing and maintaining adequate ventilation by circulation of fresh air, and there shall also be provided and maintained sufficient and

suitable natural and artificial lighting. The rest rooms or other suitable alternative accommodation shall be of such dimensions so as to provide at least a floor area of 1.1 square meter for each person. The rest, rooms or other suitable alternative accommodation shall be so constructed as to afford adequate protection against heat, wind, rain and shall have smooth, hard and impervious floor surface. The rest rooms or other suitable accommodation shall be at a convenient distance from the establishment and shall have adequate supply of wholesome drinking water.\footnote{19. Rule 40, ISMWR, 1980.}

The migrant workmen are entitled for canteen in case the employment is likely to continue for six months and where hundred or more migrant workmen are ordinarily employed. Rule 41 of ISMWCR, 1980 provides that

1. In every establishment wherein work regarding the employment of migrant workmen is likely to continue for six months and wherein migrant workmen numbering one hundred or more are ordinarily employed, an adequate canteen shall be provided by the contractor for the use of such migrant workmen within sixty days of the date of coming into force of the rules in the case of the existing establishments and within sixty days of the commencement of the employment of migrant workmen in the case of new establishments.
(2) If the contractor fails to provide canteen within the time laid down, the same shall be provided by the principal employer, within sixty days of the expiry of the time allowed to the contractor.

(3) The canteen shall be maintained by the contractor or principal employer, as the case may be, in an efficient manner.

(4) The canteen shall consist of at least a dinning hall, kitchen, store-room, pantry and washing places separately for migrant workmen and for utensils.

(5) (i) The canteen shall be sufficiently lighted at all times when any person has access to it.

   (ii) The floor shall be made of smooth and impervious material and inside walls shall be lime washed or colour washed at least once in each year.

(6) (i) The precincts of the canteen shall be maintained in a clean and sanitary condition.

   (ii) Waste water shall be carried away in suitable covered drains and shall not be allowed to accumulate so as to cause a nuisance.

   (iii) Suitable arrangements shall be made for the collection and disposal of garbage.

(7) The dinning hall shall accommodate at a time at least 30 per cent of the migrant workmen working at a time.
(8) The floor area of the dinning hall, excluding the area occupied by the service counter and any furniture except tables and chairs shall not be less than one square metre per dinner to be accommodated as specified in sub-rule (7).

(9) (i) A portion of the dinning hall and service counter shall be partitioned off and reserved for women migrant workmen in proportion to their number.

   (ii) Washing places for women shall be separate and screened to secure privacy.

(10) Sufficient tables, stools, chairs or benches shall be available for the dinners to be accommodated as specified in sub-rule (7).

(11) (i) There shall be provided and maintained sufficient utensils, crockery, cutlery, furniture and any other equipment necessary for the efficient running of canteen.

   (ii) The furniture, utensils and other equipment shall be maintained in a clean and hygienic condition.

(12) (i) Suitable clean clothes for the employees serving in the canteen shall be provided and maintained.

   (ii) A service counter, if provided, shall have top of smooth and impervious material.

   (iii) Suitable facilities including an adequate supply of hot water shall be provided for the cleaning of utensils and equipment.
(13) The foodstuffs and other items to be served in the canteen shall be in conformity with the normal habits of the migrant workmen.

(14) The charges for meals, other foodstuffs, beverages and other items served in the canteen shall be based on no-profit, no-loss basis and shall be conspicuously displayed in the canteen.

(15) In arriving at the prices of foodstuffs and other articles served in the canteen the following items shall not be taken into consideration as expenditure, namely:

   (a) The rent for the land and buildings;

   (b) The depreciation and maintenance charges or the building and equipment provided for in the canteen;

   (c) The cost of purchase, repairs and replacement of equipments including furniture, crockery, cutlery and utensils;

   (d) the water charges and other charges incurred for lighting and ventilation;

   (e) the interest on the amounts spent on the provision and maintenance of furniture and equipment provided for in the canteen.

(16) The books of accounts and registers and other documents used in connection with the running of the canteen shall be produced on demand to Inspector.
(17) The accounts pertaining to the canteen shall be audited once every twelve months by registered accountants and auditors:

Provided that the Deputy Chief Labour Commissioner (Central) may approve of any other person to audit the accounts, if he is satisfied that it is not feasible to appoint a registered accountant and auditor in view of the site or the location of the canteen.

The Act also makes it mandatory to provide to the migrant workman, latrines and urinals. It provides that

(1) Latrines shall be provided in every establishment on the following scale, namely:—

(a) Where females are employed, there shall be at least one latrine for every 25 females;

(b) Where males are employed, there shall be at least one latrine for every 25 males; or

Provided that where the number of males or females exceeds 190, it shall be sufficient if there is one latrine for 25 males or females, as the case may be, upto the first 100, and one for every 30 thereafter.

(2) Every latrine shall be under cover and so partitioned off as to secure privacy, and shall have a proper door and fastenings.

(3) (i) Where workers of both sexes are employed there shall be displayed outside each block of latrine and urinal
a notice in the language understood by the majority of the workers ‘For Men only’, or ‘For Women only’, as the case may be.

(ii) The notice shall also bear the figure of a man or of a woman, as the case may be.

(4) There shall be at least one urinal for male workers upto fifty and one for female upto fifty employed at a time:

Provided that where the number of male or female workmen, as the case may be, exceeds 500 it shall be sufficient if there is one urinal for every fifty females upto the first 500 and one for every 100 or part thereof thereafter.

(5) The latrines and urinals shall be conveniently situated and accessible to workers at all times at the establishment.

(6) (i) The latrines and urinals shall be adequately lighted and shall be maintained in a clean and sanitary condition at all times.

(ii) Latrines and urinals other than those connected with a flush sewage system shall comply with the requirements of the public health authorities.

(7) Water shall be provided by the means of tap or otherwise so as to be conveniently accessible in or near the latrines and urinals.20

In addition to above in every establishment adequate and suitable facilities for washing shall be provided and maintained for the use of migrant workmen employed therein. Separate and adequate screening facilities shall be provided for the use of male and female migrant workmen. Such facilities shall be conveniently accessible and shall be kept in clean and hygienic condition.21

It is also necessary to provide creche in an establishment where twenty or more workmen are ordinarily employed. Accordingly, (1) In every establishment where 20 or more workmen are ordinarily employed as migrant workmen and in which employment of migrant workmen is likely to continue for three months or more, the contractor shall provide and maintain two rooms of reasonable dimensions for the use of their children under the age of six years, within fifteen days of the coming into force of the rules, in case of existing establishment and within fifteen days of the commencement of the employment of not less than twenty women as migrant workmen in new establishments. (2) One of such rooms shall be used as playroom for the children and the other as bedroom for the children. (3) If the contractor fails to provide the creche within the time laid down, the same shall be provided by the principal

employer within fifteen days of the expiry of the time allowed to the contractor.

(4) The contractor or the principal employer as the case may be, shall supply adequate number of toys and games in the play rooms and sufficient number of cots and beddings in the sleeping room.

(5) The creche shall be so constructed as to afford adequate protection against heat, damp, wind, rain and shall have smooth, hard and impervious floor surface.

(6) The creche shall be at a convenient distance from the establishment and shall have adequate supply of wholesome drinking water.

(7) Effective and suitable provisions shall be made in every room of the creche for securing and maintaining adequate ventilation by circulation of fresh air and there shall also be provided and maintained sufficient and suitable natural or artificial lighting.\(^{22}\)

The contractor is also bound to provide every migrant workman a suitable residential accommodation.\(^{23}\)

In case the migrant workman is accompanied by any other member of his family a suitable barrack so as to accommodate one room having at least a floor area of 10 square metres, a verandah and adequate additional covered space for cooking food as well as one common sanitary

\(^{22}\) Rule 44, ISMWCR, 1980.

\(^{23}\) Rule 46, ISMWCR, 1980.
latrine, one common bathroom for every three such quarters; and in case he is unaccompanied by any other member of his family a suitable barrack so as to accommodate not more than ten such migrant workmen, having at least a floor area of not less than 6.5 square metres for each such migrant workman making use of the barrack, a verandah and adequate additional covered space for cooking food as well as one common sanitary latrine and one common bathroom for every ten such migrant workmen; within fifteen days of coming into force of the rules in the case of the existing establishments and within fifteen days of the commencement of the employment of migrant workmen in new establishment.

Every quarter and the barrack shall be so constructed as to afford adequate ventilation, protection against heat, wind, rain and shall have smooth, hard and impervious floor surface. The quarters or the barracks, as the case may be, shall be at a convenient distance from the establishment and shall have adequate supply of wholesome drinking water. The area in which the quarters and/or barracks are located as well as the latrines and bathrooms provided therein shall be kept in a clean and sanitary condition at all times. If the amenities referred to in sub-rule (1) are not provided by the contractor within the period prescribed, the principal employer shall provide
the same within a period of fifteen days of the expiry of the period laid down in the said sub-rule. If there is any dispute or disagreement regarding suitability or adequacy of provision of any of the amenities referred to the same shall be decided by Deputy Chief Labour Commissioner Central.

In this context it is highlighted that the dispute or disagreement regarding the suitability or adequacy of accommodation referred in Rule 45 shall be decided by the Deputy Chief Labour Commissioner Central. Here it is suggested that the power to decide such disputes should also be conferred upon the officials of the labour department of the State Government, because, the State officials can be easily approached by the migrant workman than the central Government officials. Therefore, Rule 45 may be amended accordingly.

There are certain cases wherein the liability of the principal employer arises. If any allowance required to be paid under section 14 or section 15 to a migrant workman employed in an establishment to which this Act applies is not paid by the contractor or if any facility specified in section 16 is not provided for the benefit of such migrant workman, such allowance shall be paid, or, as the case may be, the facility shall be provided, by the principal employer within fifteen days of the expiry of the time
allowed to the contractor under the rules except where otherwise provided for in the relevant rules. The proviso provides that in case of ailment requiring urgent medical attention or hospitalisation as the case may be, the principal employer shall provided the same immediately on the failure of the contractor to do so.24

3.2.4.5 Responsibility for Payment of Wages

Section 17 of the ISMW Act, 1979 lays down the responsibility for payment of wages to the migrant workman.

A contractor shall be responsible for payment of wages to each inter-state migrant workman employed by him and such wages shall be paid before the expiry of such period as may be prescribed.25

Every principal employer shall nominate a representative duly authorised by him to be present at the time of disbursement of wages by the contractor and it shall be the duty of such representative to certify the amounts paid as wages in such manner as may be prescribed.26

It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorised representative of the principal employer.\(^\text{27}\)

In case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of the wages in full or the unpaid balance due, as the case maybe, to the inter-state migrant workman employed by the contractor and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.\(^\text{28}\)

It is also provided by the ISMW Act, 1979 that the rate of wages of a migrant workman in an establishment, where he is required to work which is neither same nor or similar kind as is being performed by any other workman in that establishment, shall not be less than the rate of wages paid by the principal employer to a workman in the lowest rate of wages paid by the principal employer to a workman in the lowest category of workmen directly employed by him in that establishment or the minimum rates of wages notified by the Central Government under the Minimum Wages of Wages Act, 1948 for the same or similar type of work performed by workmen in any

\(^{27}\text{Section17(3), ISMW Act, 1979.}\)
\(^{28}\text{Section17(4), ISMW Act, 1979.}\)
scheduled employment in the area in which the establishment is located, or the rates of wages payable to the workmen for performing same or similar kind of work in that establishment in the State in which the establishment is located, whichever is higher.29

The contractor shall fix wage periods in respect of which wages shall be payable.30

No wage period shall exceed one month.31

The wages of every migrant workman in an establishment by a contractor where less than 1000 workmen are employed shall be paid before the expiry of the seventh day and in other cases before the expiry of tenth day every month.32

Where the employment of any migrant workman is terminated by or on behalf of the contractor, the wages earned by the migrant workman shall be paid before the expiry of the second working day from the day on which his employment is terminated.33

All payments of wages shall be made by the contractor on working day at the work premises and during the working time and on a date notified in advance and in case, the work is completed before the expiry of final payments

shall be made within 48 hours of the last working day.\textsuperscript{34} Wages due to every migrant workman, shall be paid to him direct or to persons duly authorised by him in this behalf.\textsuperscript{35}

All wages shall be paid in current coin or in currency or in both. Wages shall be paid without any deduction of any kind except those specified by the Central Government by general or special order in this behalf or permissible under the Payment of Wages Act, 1936.\textsuperscript{36}

A notice showing the wages period and the place and time of disbursement of wages shall be displayed at the place of work and a copy sent by the contractor to the principal employer under acknowledgment.\textsuperscript{37}

The principal employer shall ensure the presence of his authorised representative at the place and time of disbursement of wages by the contractor to migrant workman; and it shall be the duty of the contractor to ensure the disbursement of wages in the presence of such authorised representative.\textsuperscript{38}

\textbf{3.2.4.6 Liability of Principal Employer in Certain Cases}

The Act also deals with the liability of principal employer towards the migrant workmen.\textsuperscript{39} In addition to the contractor, the principal employer has certain

\begin{itemize}
\item \textsuperscript{34} Rule 30 of ISMWCR, 1980.
\item \textsuperscript{35} Rule 31 of ISMWCR, 1980.
\item \textsuperscript{36} Rule 32 of ISMWCR, 1980.
\item \textsuperscript{37} Rule 33 of ISMWCR, 1980.
\item \textsuperscript{38} Rule 34 of ISMWCR, 1980.
\item \textsuperscript{39} Section 18, ISMW Act, 1979.
\end{itemize}
obligations towards the migrant workmen. It provides that if any allowance required to be paid under section 14 or section 15 to an inter-state migrant workman employed in an establishment to which this Act applies is not paid by the contractor or if any facility specified in section 16 is not provided for the benefit of such workman, such allowance shall be paid, or, as the case may be, the facility shall be provided, by the principal employer within such time as may be prescribed.

Therefore, it can be concluded that in case the contractor fails to perform his obligations under the Act, the principal employer is bound to perform the obligations as provided under the Act. This section further provides that all the allowances paid by the principal employer or all the expenses incurred by him in providing the facility referred to in sub-section (1) may be recovered by him from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.

It implies that the principal employer has a right to recover all the expenses so incurred from the contractor either by deduction or as a debt payable by the contractor. It is essential to highlight here that ISMW Act, 1979 is a welfare legislation and it seeks to protect the interest of migrant workmen. In this reference it is suggested that the
appropriate Government should impose fine upon the contractor in case he fails to perform the obligations imposed upon him by the legislation.

### 3.2.4.7 Past Liabilities

It shall be the duty of every contractor and every principal employer to ensure that any loan given by such contractor or principal employer to any inter-state migrant workman does not remain outstanding after the completion of the period of employment of such workman under the said contractor or, as the case may be, in the establishment, of such principal employer and accordingly every obligation of an inter-state migrant workman to repay any debt obtained by him during the period of his employment from the contractor or the principal employer and remaining unsatisfied before the completion of such period shall, on such completion, be deemed to have been extinguished and no suit or other proceeding shall lie in any court or before any authority for the recovery of such debt or any part thereof.\(^{40}\)

An analysis of this provision reveals that any loan given by the contractor or principal employer to the migrant workman does not remain outstanding after the completion of employment. It means that every obligation of the migrant workman to repay any debt obtained by him

\(^{40}\) Section 19, ISMW Act, 1979.
during the period of his employment stands extinguished on the completion of the period of employment.

3.2.5 Inspecting Staff

The Act also contains provisions relating to inspecting staff appointed for the purpose.

3.2.5.1 Inspectors

Section 20 deals with the appointment of Inspectors for the purpose of this Act. Sub-section 1 of section 20 provides that the appropriate Government may, by notification in the official gazette, appoint such persons as it thinks fit to be Inspectors for the purposes of this Act, and define the local limits within which they shall exercise their powers under this Act.

Sub-section 2 of section 20 deals with the powers of the Inspector. It provides that an Inspector may

(a) if he has reason to believe that any inter-state migrant workmen are employed in any premises or place, enter, at all reasonable hours, with such assistants (if any), being persons in the service of the Government or any local or other public authority as he thinks fit, such premises or place for the purpose of—

(i) satisfying himself whether the provisions of this Act in relation to the payment of wages, conditions of service, or facilities to
be provided to such workmen are being complied with;

(ii) examining any register or record or notices required to be kept or exhibited by the provisions of this Act or the rules made thereunder, and requiring the production thereof for inspection;

(b) examine any person found in any such premises or place for the purpose of determining whether such person is an inter-state migrant workman;

(c) require any person giving out work to any workman, to give any information which is in his power to give, with respect to the names and addresses of the persons to, for and from whom the work is given out or received, and with respect to the payments to be made for the work;

(d) seize or take copies of such register, record of wages, or notices or portions thereof as he may consider relevant in respect of an offence under this Act, which he has reason to believe has been committed by a principal employer or contractor, and

(e) exercise such other powers as may be prescribed.
The above provision reveals that the Inspector can exercise following powers:

1. He can enter in any premises subject to other conditions.
2. He can examine any register or record;
3. He can require the production of any document for inspection;
4. He can examine any person found in the premises;
5. He can require any person to give any information regarding any payment to be made to the migrant workmen;
6. He can seize or take any register or record of pages;
7. He can exercise any other power.

If a State Government seems it necessary for the purpose of satisfying itself that the provisions of this Act are being complied with in respect of any workmen belonging to that State and employed in an establishment situated in another State, it may, by order in writing, appoint such persons, being persons in the service of that Government, for the exercise of such of the powers mentioned in sub-section (2), as maybe specified in that order.

Any person required to produce any document or thing, or to give any information required, by an Inspector shall be deemed to be legally bound to do so within the
meaning of section 175 and section 176 of the Indian Penal Code (45 of 1860). The Provisions of the Code of Criminal Procedure, 1973 (2 of 1974), shall, so far as may be, apply to any search or seizure under this section as they apply to any search or seizure made under the authority of a warrant issued under section 94 of the said Code.

3.2.6 Miscellaneous

There are certain miscellaneous provisions mentioned from section 21 to 36 in the Act. All these provisions have been discussed in detail in the following pages.

3.2.6.1 Inter-State Migrant Workmen to be Deemed to be in Employment from Date of Recruitment for the Purposes of Certain Enactments

Section 21 of ISMW Act, 1979 lays emphasis upon the date of recruitment for the purpose of the enactments mentioned in the Schedule.

For the purposes of the enactments specified in the Schedule, an inter-state migrant workman shall, on and from the date of his recruitment, be deemed to be employed and actually worked in the establishment or, as the case maybe, the first establishment in connection with the work of which he is employed.

It implies that the enactments mentioned in the Schedule attached to this Act shall also be applied upon the migrant workmen. The Schedule contains six

3.2.6.2 Provisions Regarding Industrial Disputes in Relation to Inter-State Migrant Workmen

The Act contains provisions regarding the settlement of industrial dispute, which comes into existence between the employer and migrant workmen. Sub-section 1 of Section 22 of the Act provides that

Notwithstanding anything contained in the Industrial Disputes Act, 1947 (14 of 1947), any dispute or difference in connection with the employment or non-employment or the terms of employment or the conditions of labour, of an inter-state migrant workman (hereafter in this section referred to as the industrial dispute), may

(a) if the industrial dispute is relatable to an establishment referred to in sub-clause (i) of clause (a) of sub-section (1) of section 2, be referred under the provisions of the said Act, by the Central Government to any of the authorities referred to in Chapter II of that Act (hereafter in this section referred to as the said authorities), —

41. Section 22, ISMW Act, 1979.
(i) in the State wherein the establishment is situated;

(ii) in the State wherein the recruitment of such workman was made if he makes an application in that behalf to that Government on the ground that he has returned to that State after the completion of his employment.

Therefore, according to this provision any industrial dispute relating to employment, non employment, terms of employment and conditions of labour of migrant workmen may be referred to the State wherein the establishment is situated or to the State wherein the recruitment of the migrant workmen took place. The terms, employment, non-employment, terms of employment and conditions of labour are full of meaning. "Employment" connotes that the migrant workman is still doing the job and it includes all those subject matters, which arise during the course of employment. "Non Employment" signifies that the migrant workman is outside the course of employment.

Non-employment includes retrenchment as well as refusal to reinstate. The use of the word 'non-employment' raises question, whether an employee who had been dismissed, removed, discharged or retrenched can be re-instated by an order of the Industrial Tribunal.

42. Fedders Lloyd Corporation Ltd. v. Lt. Governor, Delhi, AIR 1970 Delhi 60.
In *Western India Automobile Association v. Industrial Tribunal*, the Federal Court held:

Re-instatement is connected with non-employment and is, therefore, within the words of the definition. It would be curious result if the view is taken that though a person discharged during a dispute is within the definition of the word ‘workman.’ Yet if he raises a dispute about dismissal and reinstatement, it would be outside the words of the definition in connection with employment or non-employment.

The expression "Terms of Employment" includes all those terms and conditions upon which the employment is offered to the migrant workmen. "Conditions of Labour" means all those conditions in which, migrant workman is required to work. It includes the immediate environment or the circumstances or the conditions wherein the migrant workmen is bound to work. Therefore, the industrial dispute between the employer and the migrant workman may relate to any of the subject matters relating to employment, non employment, terms of employment and conditions of labour.

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43. AIR 1940 FC 111.
(b) if the industrial dispute is relatable to an establishment referred to in sub-clause (ii) of clause (a) of sub-section (1) of section 2,—

(i) be referred under the provisions of the said Act, by the Government of the State wherein the establishment is situated, to any of the said authorities in that State; or

(ii) be referred under the provisions of the said Act, by the Government of the State wherein the recruitment of such workman was made to any of the said authorities in that State, if he makes an application in that behalf to that Government on the ground that he has returned to that State after the completion of his employment:\footnote{Clause (f), Section 22(1), ISMW Act, 1979.}

According to this provision, if the Industrial dispute relates to an establishment in relation to which the State Government is the appropriate Government and if the migrant workman makes an application within the fixed time to the State Government to refer the Industrial dispute to any of the authorities of the State Government, it shall be referred to that authority. This section also provides that without prejudice to the provisions of section 33B of the Industrial Disputes Act, 1947 where during the pendency of any proceeding in respect of an industrial
dispute under that Act before any of the said authorities in the State wherein the establishment is situated, an application is made to that authority by an inter-state migrant workman for the transfer of such proceeding to a corresponding authority in the State wherein his recruitment was made on the ground that he has returned to that State after the completion of his employment, that authority shall forward the application to the Central Government, or, as the case may be, to the Government of the State wherein such recruitment was made and transfer such proceeding in the prescribed manner to such authority as may be specified in this behalf by that Government under sub-section 3 of section 22. The Central Government has power to withdrawn any proceeding and to refer it further to any of the authorities on the basis of justified grounds. Without prejudice to the provisions of sub-section (2), if the Central Government is satisfied that it is expedient in the interest of justice so to do, it may, by order in writing and for reasons to be stated therein, withdraw any ‘proceeding in respect of any industrial dispute relating to an inter-state migrant workman pending before an authority in the State in which the establishment concerned is situated and transfer the same to such authority in the State wherein the recruitment of such workman was made as may be specified in the order.
While doing so the central Government should reduce into writing all the justified reasons for the transfer of the industrial dispute to the other authority in the State, in which the migrant workman was recruited. An analysis of the above provision indicates that the withdrawal and transfer of industrial dispute from one authority to another authority in the State, wherein, the migrant workmen was recruited takes place, if the following conditions are fulfilled.

(1) If it is expedient in the interest of justice, so to do;
(2) It must be by way of an order in writing;
(3) The order must contain the reasons for the withdrawal and its further transfer.

Further the authority to which any proceeding is transferred may proceed either de novo or from the stage at which it was so transferred.

3.2.6.3 Registers and other Records to be Maintained

Principal employer is bound to maintain registers and other records relating to the employment of migrant workmen. Every principal employer and every contractor shall maintain such registers and records, giving such particulars of the inter-state migrant workmen employed, the nature of work performed by such workmen, the rates of wages paid to the workmen and such other particulars in such form as may be prescribed. Every principal employer
and every contractor shall keep exhibited in such manner as may be prescribed within the premises of the establishment where the inter-state migrant workmen are employed, notices in the prescribed form containing particulars about the hours of work, nature of duty and such other information as may be prescribed.

The principal employer and the contractor are bound to maintain the following register and records containing

(a) all the particulars of migrant workmen employed;
(b) the nature of work performed by them;
(c) the rates of wages paid to them; and
(d) other necessary particulars.

In addition to above every principal employer and contractor is bound to exhibit notices in the prescribed manner containing

(a) hours of work of migrant workmen;
(b) nature of duty of migrant workmen;
(c) such other information as is necessary.

3.2.6.4 Obstructions

Section 24 of ISMW Act, 1979 prescribes punishment for those who obstruct an Inspector or any other authorised person in discharge of his duties.

Whoever obstructs an Inspector or a person appointed under sub-section (3) of section 20 (hereinafter referred to as the authorised person) in the discharge of his duties
under this Act or refuses or wilfully neglects to afford the Inspector or authorised person any reasonable facility for making any inspection, examination, inquiry or investigation authorised by or under this Act in relation to an establishment to which, or a contractor to whom this Act applies, shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees, or with both.

It implies that a person who obstructs an Inspector or an authorised person,

(a) in discharge of his duties under this Act; or
(b) refuses; or
(c) wilfully neglects,

to afford the Inspector or authorized person any reasonable facility for,

(a) making an inspection;
(b) examination;
(c) inquiry; or
(d) investigation,

in relation to an establishment to which this Act applies shall be punishable with imprisonment. The imprisonment may extend to two years or with fine which may extends to two thousand rupees or with both.

However, in order to ensure the complete compliance of the provisions of the Act, it is the need of the hour that
the imprisonment in such situation may be extended to three years and the fine may be extended to five thousand rupees or with both.

It is also provided by section 24 that whoever wilfully refuses to produce on the demand of any Inspector or authorised person any register or other document kept in pursuance of this Act or prevents or attempts to prevent or does anything which he has reason to believe is likely to prevent any person from appearing before or being examined by any Inspector or authorised person acting in pursuance of his duties under this Act, shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extent to two thousand rupees, or with both.

It implies that a person who willfully refuses to produce on demand of an Inspector or any authorised person

(a) any register; or
(b) other document kept in pursuance of this Act; or
(c) prevents; or
(d) attempts to prevent; or
(e) does anything,

which he has reason to believe is likely to prevent any person from appearing before or being examined by an Inspector shall be punishable. This punishment may
extend to two years or with fine which may extend to two thousand rupees or with both. In this context keeping in view the inadequacy of the punishment it is suggested that the imprisonment may be extended upto three years and the fine may be extended upto five thousand rupees.

3.2.6.5 Contravention of Provisions Regarding Employment of Inter-State Migrant Workmen

Section 25 is general in its nature because of the fact that it is applied in case of violation of any provision or rule enacted under this legislation. It also lays down the punishment for the continuing contravention of the provisions of this Act. Accordingly, whoever contravenes any provisions of this Act or of any rules made thereunder regulating the employment of inter-state migrant workmen, or contravenes any condition of a license granted under this Act, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both and in the case of a continuing contravention, with an additional fine which may extend to one hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

Accordingly, three types of acts have been made punishable under this provision. These are:

(a) Contravention of any provision of this Act; or
(b) Contravention of any rule made, for regulating the employment of inter-state migrant workmen; or
(c) Contravention of any condition of a license granted under the Act.

The punishment prescribed for either of the above offences may extend to one year's imprisonment or with fine which may extend to one thousand rupees or with both. In case of continuing contravention it may be punishable with an additional fine, which may extend to one hundred rupees for everyday during which such contravention continues. In view of the fact that maximum period of imprisonment prescribed under this provision, it is suggested that the imprisonment of one year may be extended upto three years or with fine which may extend to five thousand rupees or with both. Likewise, in case the contravention continues, it should be punishable with an additional fine which may extend to five hundred rupees everyday. It is also pertinent to highlight here that under this section contravention or violation of any rule made for regulating the employment of inter-state migrant workmen is punishable. This provision does not speak anything about the violation of the conditions of service of migrant workmen. This aspect should also be made punishable under this provision.
3.2.6.6 Other Offences

If any person contravenes any of the provisions of this Act or of any rule made thereunder for which no other penalty is elsewhere provided, he shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees, or with both.\(^45\)

According to this provision, contravention of –

(a) any provision of this Act; or
(b) any rules made under the Act

shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to two thousand rupees or with both. But, the sine qua non for the application of this provision is that the contravention of the Act or of the Rule should be of such a nature, for which no other penalty is elsewhere provided. If no penalty is provided for the contravention, then this section shall be applied. It necessarily means that other types of contravention are made punishable under section 25 of the Act. So far as the quantum of punishment is concerned under section 26, it is suggested that the imprisonment may be increased up to three years. It is also necessary to highlight here that this provision does not speak anything about continuing contravention.

\(^{45}\) Section 26, ISMW Act, 1979.
3.2.6.7 Offences by Companies

The Act also deals with the situation wherein offences have been committed by the companies.46

Sub-section 1 of section 27 lays down that where an offence under this Act has been committed by a company, every person who, at the time when the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. The proviso also provides that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

It implies that a person who happens to prove that the offence was committed without his knowledge or he exercised due diligence to prevent the offence shall not be punished under the Act.

Sub-section 2 of section 27 further speaks about the individual liability of any director, manager, secretary or any other officer. It provides that notwithstanding anything contained in sub-section (1), where any offence under this

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Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

3.2.6.8 Cognizance of Offences

No court shall take cognizance of any offence under this Act except on a complaint made by, or with the previous sanction in writing of an Inspector or authorised person and no court inferior to that of a Metropolitan Magistrate or of a Judicial Magistrate of the first class shall try any offence punishable under this Act.\(^{47}\)

This provision indicates that the court shall take cognizance of any offence under this Act in the following situations:

1) If the complaint is made by the Inspector; or
2) If the complaint is made with the previous sanction in writing of an Inspector; or
3) If the complaint is made with the previous sanction in writing of an authorized person.

After going through the above provision, it is clear that the migrant workman can not approach the Court at

\(^{47}\) Section 28, ISMW Act, 1979.
his own level without getting the prior sanction of the Inspector or the authorised person. In this reference the possibility of not granting sanction by the Inspector or by the authorized person to the migrant workman can not be ruled out. Therefore, it is suggested that the condition of seeking prior sanction by the Inspector or by the authorized person should be waived of, therefore, the Act should be amended accordingly.

3.2.6.9 Limitation of Prosecutions

The Act also lays down the limitation period for making a complaint under the ISMW Act, 1979.\textsuperscript{48} It provides that no court shall take cognizance of an offence punishable under this Act unless the complaint thereof is made within three months from the date on which the alleged commission of the offence came in the knowledge of the Inspector or authorised person concerned. The proviso provides that where the offence consists of disobeying a written order made by an Inspector or authorised person, complaint thereof may be made within six months of the date on which the offence is alleged to have been committed.

The limitation period provided under the provision of this Act is three months. The period of three months shall be computed from the date on which the commission of

\textsuperscript{48} Section 29, ISMWA, 1979.
offence came to the knowledge of the Inspector or authorized person. In this reference it is essential to highlight that prior sanction of the Inspector is a must for instituting a suit under this Act. It is equally true that seeking prior sanction of the Inspector is a long process which generally takes a long time.

Sometimes, the Inspector may take more than two months for granting sanction to institute the suit. In such situation the migrant workman will be left with a short span of time to institute the suit. Therefore, keeping in view the interest of the migrant workmen it is suggested that the time taken by the Inspector or by the authorized person for granting sanction to institute the suit should be excluded from the limitation period of three months provided under the Act. Hence, the Act should be amended to this effect.

3.2.6.10 Effect of Laws and Agreements Inconsistent with the Act

Section 30 highlights the effect of laws and agreements which are inconsistent with the inter-state migrant workmen. Accordingly, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any agreement or contract of service, or in any standing orders
applicable to the establishment whether made before or after the commencement of this Act.

Therefore, it implies that the below mentioned situations shall not affect the application of the inter state migrant workman Act.

(a) anything inconsistent contained in any other law; or

(b) anything inconsistent contained in the terms of agreement; or

(c) anything inconsistent contained in contract of service; or

(d) anything inconsistent contained in any standing order applicable to the establishment, whether made before or after the commencement of this Act.

Since, the ISMW Act, 1979 is a welfare legislation, which protects the interest of migrant workmen, therefore, the proviso attached to section 30 provides that where under any such law, agreement, contract of service or standing orders, the inter-state migrant workmen employed in the establishment are entitled to benefits in respect of any matter which are more favourable to them than those to which they would be entitled under this Act, the inter-state migrant workmen shall continue to be entitled to the more favourable benefits in respect of that matter,
notwithstanding that they receive benefits in respect of other matters under this Act.

This provision does not prohibit migrant workmen from entering into an agreement with the principal employer or the contractor, as the case may be, for granting them rights or privileges in respect of any matter which is more favourable to them than that to which they would be entitled under this Act.

3.2.6.11 Power to Exempt in Special Cases

The appropriate Government has the power to exempt an establishment from the application of ISMW Act, 1979. The appropriate Government may, by notification in the official gazette and subject to such conditions and restrictions, if any, and for such period or periods as may be specified in the notification, direct that all or any of the provisions of this Act or the rules made thereunder shall not apply to or in relation to any establishment or class of establishments or any contractor or class of contractors or any inter-state migrant workmen in such establishment or class of such workmen, if that Government is satisfied that it is just and proper so to do having regard to the methods of recruitment and the conditions of employment in such establishment or class of establishments and all other relevant circumstances.49

But while doing so the appropriate Government is bound to put some conditions and restrictions upon the establishment, which is put outside the scope and application of this Act. Under this provision the contractor may also be exempted from the application of the Act and the Rules made under it. The period of exemption must also be notified in the notification. The power to exempt under this provision lies upon the appropriate Government and this power can be exercised if the appropriate Government is satisfied that it is just and proper to do so. However, it is suggested that the appropriate Government should reduce into writing the reasons in detail for granting exemption to the establishment or to any contractor or to any migrant workman from the application of this Act. It is essential to highlight here that the power to grant exemption under section 31 is subject to judicial review. Exemption granted on arbitrary, fanciful, unreasonable and unjustified grounds is liable to be stroked down.

3.2.6.12 Protection of Action Taken under the Act

Anything which is done in good faith or intended to be done in good faith shall be protected under the Act. Accordingly, no suit, prosecution or other legal proceedings shall lie against any registering officer, licensing officer or any other employee of the Government for anything which
is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.

Further, no suit or other legal proceedings shall lie against the Government for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Act or any rule or notification or order made or issued thereunder.

The definition of good faith provides that an act is only done in good faith, if it is done with due care and attention. The phrase due care and attention implies genuine effort to reach the truth and not the ready acceptance of an ill-natured belief. When a question arises as to whether a person acted in good faith, then it devolves upon him to show not merely that he had a good intention but that he exercised such care and skill as the duty reasonably demanded for its due discharge.\textsuperscript{50}

**Burden of Proof**

"The burden is on the accused to prove this fact. Whether a person took due care and attention before he made the imputation is a matter most often within the personal knowledge of that person himself. The accused, must prove that he made due enquiries before he published the imputation. It is not enough to say that he made a formal enquiry in a slipshod manner. The words 'due care

\textsuperscript{50} Gaïjadin, (1934) 9 Luck 517.
and attention imply that the accused must have made the enquiry in a reasonable manner with all circumspection. It is true that the accused is not bound to prove that the enquiry made by him was fool-proof or without the possibility of any error or chance of mistake. However, the accused must show that he got the information from proper source and he had reasonable grounds to believe the truth of the statement, he made. The accused must prove by preponderance of probability that there was good faith on his part. The accused also should show that there was no malice on his part, that is to say, that there was no ill-will or spite towards the person against whom he made the imputation.

The question of good faith must be considered with reference to the position of the accused and the circumstances under which he acted. The law does not expect the same care and attention from all persons regardless of the position they occupy.\(^5\) In the General Clauses Act this expression is thus defined as "A thing shall be deemed to be done in ‘good faith’ where it is in fact done honestly, whether it is done negligently or not.” The Supreme Court has held that the element of honesty which is introduced by the definition prescribed by the General

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Clauses Act is not introduced by the definition of the Code.\footnote{H. Singh, AIR 1966 SC 97.}

\section*{3.2.6.13 Power to Give Directions}

The Central Government may give directions to the Government of any State as to the carrying into execution in the State of the provisions contained in this Act.\footnote{Section 33, ISMW Act, 1979.}

\section*{3.2.6.14 Power to Remove Difficulties}

If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the official gazette, make such provisions not inconsistent with the provisions of this Act, as appears to it to be necessary or expedient for removing the difficulty.

Provided that no such order shall be made after the expiry of two years from the date on which this Act comes into force.

Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.\footnote{Section 34, ISMW Act, 1979.}

\section*{3.2.6.15 Power to Make Rules}

The Act confers power upon the appropriate Government to make Rules related to either of the matters mentioned in Section 35 of the Act. But these Rules are
bound to be published in official gazette. Such Rules may provide for all or any of the following matters, namely.

(a) the form and manner in which an application for the registration of an establishment may be made under section 4, the fees payable thereon and the form of a certificate of registration issued under that section;

(b) the form in which an application for the grant or renewal of a license may be made under section 9 and the particulars it may contain;

(c) the manner in which an investigation is to be made in respect of an application for the grant of a license and the matters to be taken into account in granting or refusing a license;

(d) the form of a license which may be granted or renewed under this Act, the conditions subject to which the license may be granted or renewed, the fees payable for the grant or renewal of a license and the security, if any, required to be furnished for the due performance of the conditions of the license;

(e) the circumstances under which licenses may be varied or amended under section 10;

(f) the form and the manner in which appeals may be filed under section 11 and the procedure to be followed by appellate officers in disposing of the appeals;
(g) the wage rates, holidays, hours of work and other conditions of service which an inter-state migrant workman is entitled under section 13;

(h) the period within which wages payable to inter-state migrant workmen should be paid by the contractor under sub-section (1) of section 17 and the manner of certification of such payment under sub-section (2) thereof;

(i) the time within which allowances or facilities required by this Act to be provided and maintained may be so provided by the contractor and in case of default on the part of the contractor, by the principal employer under section 18;

(j) the powers that may be exercised by Inspectors under section 20;

(k) the form of registers and records to be maintained, and the particulars and information to be contained in notices to be exhibited by the principal employers and contractors under section 23;

(l) the manner of submission of returns, and the forms in which, and the authorities to which, such returns may be submitted;

(m) legal aid to inter-state migrant workmen;

(n) any other matter which is required to be, or may be, prescribed under this Act.
Every rule by the Central Government under this Act shall be laid, as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days, which may be comprised in one session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, however, any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

After going through all the provisions of the Act, it can be concluded that the Act provides for –

(a) registration of all principle employers/contractors employing migrant labour.

(b) licensing of contractors—no contractor can recruit any migrant labour without obtaining license from appropriate government

(c) issue of passbooks affixed with a passport size photograph of the workman indicating the name and the place of the establishment where the worker is employed, the period of employment, rates of wages, etc. to every inter-state migrant workman.
(d) payment of minimum wages fixed under Minimum Wages Act, 1948. Principle employer to nominate a representative to be present at the time of disbursement of wages to the migrant workman by the contractor.

(e) payment of equal wages for inter-state migrant workmen performing similar nature of work alongwith the local labourers.

(f) payment of journey allowance including payment of wages during the period of journey.

(g) payment of displacement allowance.

(h) suitable residential accommodation.

(i) medical facilities free of charge.

(j) protective clothing.

(k) reporting by the contractor the incidence of fatal accident or serious injury of such workman to the specified authorities of both the states and also the next kin of the workman.

3.3 **Minimum Wages Act, 1948.**

The Minimum Wages Act, 1948 is the most important legislation that has been enacted for the benefit of unorganised labour. The very purpose of enacting the Act is to fix, review and revise the minimum rates of wages in
the schedule employment where workers are engaged in the unorganised sector.\(^{55}\)

This Act primarily aims at safeguarding the interests of the workers engaged in unorganized sector who are vulnerable to the exploitation due to illiteracy and lack of bargaining power. The Act binds employers to pay the minimum wages to the workers as fixed under the statute by the state.\(^{56}\) This Act does not discriminate between male and female workers. No standard is laid down by the Act for fixing the minimum wage and hence, norms recommended by Indian Labour Congress, 1957 are taken into account for fixing minimum wages. The decision in *The Workmen v. Reptakose Brett and Co. Ltd. and another*,\(^{57}\) by Supreme Court is another guideline. It is decided by Apex Court that the children's education, medical requirement, minimum recreation, provision for old age, marriage etc., should further constitute 25% of the minimum wage and used as a guide in fixation of minimum wages. Section 12 of the Act prevents employers from paying less than minimum wages and Section 13 protects workers from exploitation by fixing the number of hours in a working day. In order to have a uniform structure all across the

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56. So far 1530 employments are covered under this Act, [http://www.indialabourstat.com/India. accessed on 30th September 2014](http://www.indialabourstat.com/India. accessed on 30th September 2014).
57. AIR 1992 SC 504.
country in wage structure, concept of National Floor Level Minimum Wage was mooted on the basis of recommendations of National Commission on Rural Labour in 1991. The Central Government revised the national minimum wages according to the recommendations of different working groups from time to time. Apart from this Act, the social security coverage to the unorganized sector workers are through some Central legislations including welfare funds. These funds are financed out of cess levied on manufactured products. The welfare funds are utilized for implementing welfare schemes for these workers coming under specific legislations. According to survey conducted by NSSO in 1999-2000 about 1.76 crores of workers are employed in construction activities.

Section 3 of the Minimum Wages Act provides that the appropriate Government has the power to fix the minimum rates of wages payable to employees who are working in the scheduled employment and in the employment added to either Part I or Part III of the schedule by notification under section 27. The Minimum Wages Act is enacted for providing security to the workmen that market forces, and the law of demand and supply are not allowed to exploit

the workmen in industries where worker are poor, vulnerable, unorganised and without bargaining power. The minimum rates of wages are fixed keeping in view the minimum requirement of a family, and wages at these rates are to be paid by all employers irrespective of their capacity to pay. Section 13 empowers the appropriate Government to fix the numbers of hours per day. This Act helps unorganised workers who are working in the scheduled employments.

In our country, where poverty and unemployment is a major problem, it is not unlikely that labour may offer to work even on starvation wages. A draft convention on the question of minimum wages was adopted at International Labour Conference held in Geneva in 1928. Draft convention contemplated the creation of a minimum wage fixation machinery only in the case of traders or parts of trades in which no arrangements exist for the effective regulation of wages by collective agreement otherwise and wages are exceptionally low. In view of the Directive Principles of State Policy as contained in Article 43 of our Constitution it is beyond doubt that the securing of living wages to labourers which ensures not only fare physical subsistence but also the maintenance of health and decency, is conductive to the general interest of the public. To secure the welfare of the workers in a competitive
market by providing for a minimum limit of wages in certain employments "The Minimum wages Act, 1948" was enacted. The object of this Act is to prevent exploitation of the workers and for this purpose, aims at fixation of minimum wages which employer must pay,\(^{59}\)

The legislature undoubtedly intended to apply the Act to those industries or localities in which, by reason of causes, such as unorganized labour or absence of machinery for regulation of wages, the wages paid to workers were in the light of the general level of wages and subsistence level inadequate.\(^{60}\) The Act contemplates that minimum wages rates must ensure not only the mere physical need of the worker which would keep him just above starvation but must ensure for him not only his subsistence and that of his family but also preserve his efficiency as a workman. It should, therefore, provide not merely for the fare subsistence of his life but the preservation of the workers and so must provide for some measure of educational, medical requirements and amenities.\(^{61}\)

Minimum Wages Act shall be applied with respect to the scheduled employment. The schedule attached to Minimum Wages Act contains a long and lengthy list of

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employs. The migrant workers working in these scheduled employments shall also be regulated by the provisions of Minimum Wages Act. It implies that the definition of employee contained in Section 2(i) of the Minimum Wages Act is so wide and comprehensive that it includes also migrant workers. It has been held by Kerala High Court in Don Bosco Higher Secondary School, Thrissur Employees', State Insurance Corporation and others\textsuperscript{62} that the definition of 'employee' in Sec. 2(i) of the Minimum Wages Act has a wider amplitude than the definition of a 'workman' as contained in Section 2(8) of the Industrial Dispute Act. Therefore, in order to bring a person in the category of an employee within the meaning of the Minimum Wages Act, 1948, he should work in a scheduled employment in respect of which minimum rates of wages have been fixed.

It has been held by Orissa High Court in M/s. M.C. Patel and Co., Sambalpur and another v. State of Orissa, Labour and Employment Department and another\textsuperscript{63} that there is nothing in Section 5 or any other provision of the Minimum Wages Act which prevents Government from either reducing or increasing the rates of minimum wages which they might publish as their proposals under section 5(1)(f) of the Act.

\textsuperscript{62} 2015 Lab IC 155 (Ker).

\textsuperscript{63} 2015 Lab IC 1395 (Ker).
'Wages' means all remuneration capable of being expressed in terms of money, which would if the terms of the contract of employment, express or implied, were fulfilled, be payable to person employed in respect of his employment or of work done in such employment and includes house rent allowance, but does not include –

(i) the value of:

(a) any house accommodation, supply of light, water, medical attendance; or

(b) any other amenity or any service excluded by general or special order of the appropriate Government;

(ii) any contribution paid by the employer to any Pension Fund or Provident Fund or under any scheme of social insurance;

(iii) any travelling allowance or the value of any travelling concession;

(iv) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or

(v) any gratuity payable on discharge.\(^{64}\)

It is important to mention here that "wages" should be given in terms of money only and not in terms of goods or otherwise.

\(^{64}\) Section 2(h), The Minimum Wages Act, 1948.
However, the Act also provides that where it has been the custom to pay wages wholly or partly in kind, the appropriate Government may be notification in the official gazette, authorises the payment of minimum wages either wholly or partly in kind.\textsuperscript{65} However, when we talk about Inter-state Migrant workmen (Regulations of Employment and Conditions of Service) Central Rules, 1980, then these Rules specifically mention it that all wages shall be paid in current coin or in currency or in both.\textsuperscript{66} And these Rules are framed under the power given by the Inter-State Migrant Workmen Act, 1979.\textsuperscript{67} And this Act specifically provides that the provisions of this Act have overriding effect on any other law which is inconsistent to this Act.\textsuperscript{68} So with regard to inter-state migrant workmen, the payment of wages will be given in terms of money only, in all situations and conditions.

The expression "minimum wages" is not defined in the Act presumably because it would not be possible to lay down a uniform minimum wages for all industries throughout the country on account of different and varying conditions prevailing from industry to industry and from

\textsuperscript{65} Sec. 11, The Minimum Wages Act, 1948.
\textsuperscript{66} Rule 32, The Inter-State Migrant Workmen Central Rules, 1980.
\textsuperscript{67} Sec. 35, The Inter-State Migrant Workmen Act, 1979.
\textsuperscript{68} Sec. 30, The Inter-State Migrant Workmen Act, 1979.
one part of the country to another.\textsuperscript{69} It was held in \textit{Hydro (Engineers) Private Ltd. v. the Workmen}\textsuperscript{70}:

"The concept of minimum wages takes into consideration the factor of the prevailing cost of essential commodities whenever such minimum wages is to be fixed. The idea of fixing such wages in the light of cost of living at a particular juncture of time and neutralising the rising prices of essential commodities by linking up scales of minimum wages with the cost of living index cannot, therefore, be said to be alien to the concept of minimum wages. Furthermore, in the light of spiralling of prices in recent years, if the wage scales are to be realistic it may become necessary to fix them so as to neutralise at least partly the price rise in essential commodities."

In \textit{Unichay v. State of Kerala}\textsuperscript{71} it was held that the Act contemplates that minimum wages rates should be fixed in the schedule industries with the dual object of providing subsistence and maintenance of the worker and his family and preserving his efficiency as a worker.

\textsuperscript{70}. \textit{Ibid.}
\textsuperscript{71}. (1992) I LLJ 340 (SC).
It was held in *Workmen of Reptakos Bett & Co. Ltd. v. Management* that each category of the wage structure has to be tested at the anvil of social justice which is the live–fibre of our society, today. Keeping in view the socio-economic aspect of the wage structure one more component to minimum wage should be added, namely, children education, medical requirement, minimum recreation including festival/ceremonies and provision for old age, marriages, etc. should further constitute 23% of the total minimum wages. It was further held that the wage structure which approximately answers the above six components is nothing more than a minimum wages at subsistence level. The employees are entitled to the minimum wage at all times and under all circumstances. An employer who cannot pay the minimum wages has no right to engage labour and no justification to run the industry.

It is necessary to discuss here that as the Inter-State Migrant workmen (Regulation of Employment and Conditions of Service) Act, 1979 provides that an inter-state migrant workman shall in no case be paid less than the wages fixed under the Minimum Wages Act, 1948. So far as the provisions relating to the minimum wages are
concerned, the term "employee" used in Minimum Wages Act, 1948 can be read as inter-state migrant workman.

This Act provides that where an employee does two or more classes of work to each of which a different minimum rate of wages is applicable, the employer shall pay to such employee, in respect of the time respectively occupied in each such class of work, wages at not less than the minimum rate in force in respect of each such class.\textsuperscript{73}

In \textit{T.G. Lakshmaiah Setty Sons, Adom v. State of Andhra Pradesh}\textsuperscript{74} it was held that the Minimum Wages Act does not violate any of the Fundamental Right. On the other hand, it fulfills, in part, at least, the obligations of the State under the Directive Principles of the State Policy.

In \textit{Director General of Works, CPWD and Another v. Sushil Kumar and Others}\textsuperscript{75} the question before Delhi High Court was whether an employee is entitled to get overtime allowance in case he is getting wages high than the minimums wages. The Court held that the provisions of section 14 of the Act would not be applicable only where the wages being paid to a worker are otherwise in excess of minimum wages fixed under the Act (including overtime allowance). The employees would be entitled to overtime allowance notwithstanding that the employees were being

\textsuperscript{73} Section 16, The Minimum Wages Act, 1948.
\textsuperscript{74} 1981 Lab IC 690.
\textsuperscript{75} 2015 II LLJ 566 (Del).
paid wages higher than the minimum wages fixed under the Act.

In *Suja Issae, Kochi v. Deputy Labour Commission Cochin-30 and Another*,\(^{76}\) while commenting upon section 20(3) of Minimum Wages Act, 1948 the Kerala High Court has held that section 20(3) of the Act enables the authority in case of payment of wages less than the minimum rates of wages to direct compensation to be paid, as the authority may think fit, not exceeding ten times the amount of such excess. A reading of this clause shows that there is a discretion in the authority to award the compensation or not and if it decides to award compensation it is within its discretion to decide what amount it should award as compensation. This discretion has to be exercised judicially. The purpose of making this provision is to see that an employer did not contumaciously refuse to implement the provisions of the Minimum Wages Act, as non payment of wages notified under the Act will result in forced labour prohibited under Article 23 of the Constitution of India.

In view of the above discussion it can be concluded that the migrant workers working in the scheduled employments shall also be regulated by the provisions of Minimum Wages Act. It implies that the definition of

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\(^{76}\) 2015 I LLJ 73 (Ker).
'employee' contained in section 2(i) of the Minimum Wages Act is so wide and comprehensive that it includes migrant workers also Judiciary has also protected the interests of migrant workers by way of giving liberal interpretation to the provisions of this Act. Therefore it can be concluded that the Act provides a shelter to the migrant workmen in terms of wages from being exploited at the hands of employers.

3.4 Payment of Wages Act, 1936

In order to regulate the wage policy and to protect the interest of the worker in the payment of wages, the first attempt was the enactment of Payment of Wages Act, 1936.

The Payment of Wages Act, 1936 provides for the payment of wages to certain class of employed person. The main purpose of the Act is to ensure regular and prompt payment of wages and to prevent the exploitation of wages earners by prohibiting arbitrary fines and deduction from wages. The Act was subsequently amended in 1957, 1962, 1964, 1967, 1976, 1982, 2005 in order to extend its coverage. By virtue of amending Act of 2005 the wage limit was raised to cover person drawing less than 6500 per month.\(^77\) The Act provides surety of correct and timely payment of wages and also ensures that no unauthorised or arbitrary deductions are made to the employee. This Act

\(^77\) Section I (6), Payment of Wages Act, 1936.
applies to persons employed in factories, mines oil, field railways and other establishment specified in the Act.\textsuperscript{78} This Act is not applicable to self-employed/home based workers as they are not person employed in the category of establishment mentioned in the Act.

This Act is considered as one of the important components of social security for unskilled workers. The objective of Payment of Wages Act, 1936 is to regulate, by law the indiscriminate deduction and delay in the payment of wages to industrial labour.

Deductions from wages fall roughly into three classes, namely, fine which are imposed for disciplinary reasons, deduction on account of damages sustained by the employer and deduction for the use of material and tools and for other benefits provided by the employers. In all three cases it is considered that there are strong grounds for legislative regulation. In the first place the worker is utterly helpless in the matter. The employer, or more commonly his subordinate determines when a deduction should be made and fix its amount which is recovered from the wages due to the workers. Moreover, in many of the countries organizations on the part of the workers give some security against excessive and inerasable deduction. In India both forms of protection are generally lacking.

\textsuperscript{78} Gupta Meenakshi, Labour Welfare and Social Security in Unorganised Sector, p.114.
Further, the fact that in many cases the worker's wages suffice for little means than the purchase of primary necessities of life, make even a small deduction a definite hardship, while the larger deductions may increase their indebtedness and even cripple their resources for sometimes. Even when actual hardship is not caused, fine have an irritating effects on the worker and create a sense of injustice. In the case of other compulsory deductions, the workers usually pay for something definite, but even their experience elsewhere shows that protection is necessary to ensure that the deductions are made for a legitimate purpose and that the workers secure in return commensurate benefits. It is therefore concluded that a legislation is both necessary and desirable and we proceed to consider separately the protection which the law should provide in regard to each of their classes of deductions. 79

On the basis of the report of Royal Commission on Labour a comprehensive Bill was introduced in order to regulate the delay and illegal deductions from the wages of the workers. The Bill was passed in the year 1936 to regulate the payment of wages, to fix the period for the payment of wages. The wages should not be paid in kind, but it should be in current coin or currency of the realm.

Further to avoid the illegal deductions, the Act specifies the heads under which deductions can be made.

The Inter-State Migrant Workman legislation imposes an obligation on the contractor for the payment of wages. In this way the Payment of Wages Act, 1936 is also applicable to inter-state migrant workman.

The Act puts responsibility on the contractor and in case of his failure to the employer to make payment of all wages required to be made.\(^8^0\) The wage period shall not exceed one month.\(^8^1\) The wages will be paid before the expiry of the seventh day where less than one thousand persons are employed and in other cases it shall be paid before the expiry of the tenth day, after the last day of the wage period in respect of which the wages are payable.\(^8^2\)

The Act makes it mandatory on the part of the contractor or employer as the case may be to pay the wages in current coin or currency notes. It means the payment shall be case in hand. However, the employer may, after obtaining the written authorisations of the employed person, pay him the wages either by cheque or by crediting the wages in his bank account.\(^8^3\) As per this Act suspension, demotion, with holding of increment or promotion shall not be deemed to be a deduction from

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80. Section 3, The Payment of Wages Act, 1936.
81. Section 4, The Payment of Wages Act, 1936.
82. Section 5, The Payment of Wages Act, 1936.
83. Section 6, The Payment of Wages Act, 1936.
wages in any case where the rules framed by the employer for the imposition of any such penalty are in conformity with the requirements, if any, which may be specified in this behalf by the State Government by notification in the official gazette. 84

3.4.1 Fines and Deduction from Wages

When a fine is imposed on an employee it shall not be more than an amount equal to three percent of the wages payable to him in respect of that wage period. It shall not be recovered from him by installments or after the expiry of ninety days from the day on which it was imposed. No Fine shall be imposed on any employed person who is under the age of fifteen years. 85

Here it is suggested that the enhancement of the age of fifteen years upto eighteen years is the need of the time. When even the definition of juvenile includes within it the children upto the age of eighteen years and save them from the jail then this is the civil liability and in the interest of justice the age limit should be enhanced.

As per this Act the employer can make deduction of wages on some conditions such as absence from duty or on damage or loss or for services rendended, like, house-accommodation, amenity and services supplied or for recovery of advances or for recovery of loans or for

84. Section 7, The Payment of Wages Act, 1936.
85. Section 8, The Payment of Wages Act, 1936.
payments to co-operative societies and insurance schemes. It can easily be assumed from this Act that these deductions can’t be made unreasonably or in excess.

In the *Bank of India, Bombay and another v. T.S. Kelawala Bombay and others*, the Bank employees demanded wage revision and pending acceptance of demand decided to go on four hours strike daily. Bank issued a circular to deduct full day’s wages of such employees who participated in the strike. It was held that strikes and demonstrations are legitimate forms of protest and they are not banned in this country. By an administrative circular the legitimate mode of protest allowed and recognised by law cannot be stifled.

It was further held that Payment of Wages Act is regulatory. Section 7(2) read with Section 9 of the Act provides the circumstances under which and the extent to which deduction can be made. It is only when the employer has right to make deduction, resort should be had to the Act to ascertain the extent to which the deduction can be made. No deduction exceeding the limit provided by the Act is permissible even if the contract so provides. There cannot be any contract contrary to or in terms wider than the import of Sections 7 and 9 of the Act. Therefore wage deduction cannot be made under Section 7(2) of the Act.

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86. (1988) II LLJ 264 (Bom).
Payment of Wages Act if there is no such power to the employer under the terms of contract.

In the *Manager Rajapalayam Mills Ltd. v. Labour Court, Madurai and another*,\(^8^7\) an employee resigned from service. While in service the employee had taken loan, for house building. The employer, after the resignation of the employee adjusted certain salary amount due to be paid to the employee against the house building loan. In a claim for salary by the employee it was held that after resignation the employee ceased to be in the employment and therefore, his relationship with the employee after resignation will be governed by the Contract Act, and the provisions of sub-sections (1) to (3) of Section 7 of the Payment of Wages Act will not apply. In such a case it would be open to the employer to adjust the entire amount due on account of wages under Section 7(4) of the Payment of Wages Act.

In *Nathulal v. M.P. State Road Transport Corporation and others*,\(^8^8\) a driver in the employment of Madhya Pradesh State Road Transport Corporation was found responsible for causing accident and was directed to pay Rs. 3,700/- as damages to Transport Corporation and the same was directed to be deducted in monthly installments of Rs. 25/- from his salary. This order was challenged by

\(^{87}\) (1987) II LLJ 59 (Mad).

\(^{88}\) (1986) II LLJ 225 (MP).
the petitioner. It was held that section 7(2)(c) of the Payment of Wages Act permits deduction for damages only when the damages or loss is directly attributable to the negligence or default of the employee and in order to hold an employee negligent it is essential that he should be afforded an opportunity of being heard against such a charge. In the present case no such opportunity has been given to the petitioner employee and therefore the order of deduction is liable to be quashed.

In *Modi Sugar Mills v. Prescribed Authority*, the wages payable to a workman become due but the employer failed to make the payment to its workmen. Allahabad High Court ordered for the payment of wages in addition to the compensation amount to the workmen.

### 3.4.2 Deduction with Consent

In *Monsukh Gopinath Jadhav v. W.M. Bapat* it was held that there is nothing illegal in the action of the employer or the representative union in arriving at a settlement and the clause in the settlement providing for deduction of certain amount and paying it to the employees' union. Such a settlement does not contravene Section 7 of the Act because this section permits deduction with the consent of the employees.

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89. (2013) II LLJ 308 (All).
90. (182) LLJ 144 (Bombay).
3.4.3 Deduction when Employees were Prevented from Attending Duty

In *Kothari (Madras) Ltd., v. Second A.J. Cum Appellate Authority Others,*\(^91\) the question for consideration related to the validity of deduction of wages of employees who were prevented from attending duty on account of Andhra Bandh. It was held that if the Tribunal finds that an employee was not responsible for absence from duty or he was prevented from attending duty, the management is not entitled to deduct wages the Tribunal is also empowered to go into the reasons and record a finding in that regard. In the present case the workmen were prevented from attending duty by the organisers of the bandh. Therefore, the Tribunal has jurisdiction to go into this question.

In *Union of India v. Kameshwar Dubey and Others,*\(^92\) the point for consideration by the Court was the difference between "deducted wage" and "delayed wage." It was held that the difference depends upon the intention of the employer. If his intention is to deny the liability to pay the wages or to deny the right of the workmen to receive the same, it would be a case of "wages deducted." But if the employer concedes the liability to pay and does not dispute the workman's right to the same, it would be a case of "delayed payment." The word "deduction" in section 15 of

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the Payment of Wages Act is used in a wider sense. It means "to take away" or denying the liability to pay wages. It includes withholding of wages by the employer whether partially or wholly.

In *Prakash Chandra Johari v. Indian Overseas Bank and another*, the petitioner who was a godown keeper of the Indian Overseas Bank worked for half an hour on 10 January and four and half hours on 11 January 1979 and marked his attendance. The bank deducted two days wage treating him as absent from duty on both the days. The employees made an application under Section 15(2) and (3) of the Payment of Wages Act on the ground that deduction of two days wages was unjustified. After inquiry the authority constituted sunder the Payment of Wages Act held that the employee had worked for five hours on two days and therefore deduction for five hours he had worked was illegal and he was entitled for salary for five hours. The employee moved a writ petition claiming full days salary but the suit was dismissed. Thereafter he preferred special appeal in Rajasthan High Court. Dismissing the appeal it was held that in view of Section 9(1) of the Act an employee is supposed to carry out his duties during work hours and in case he for any reason refuses to work or absents himself during these working periods without permission of

93. (1986) II LLJ 496 (Raj).
the authority competent to permit, his leave of absence is liable for deduction of wages for the period he is absent. It was further made clear that the words, “by the terms of his employment” in Section 9(1) qualifies the words, “absence of an employed person from the place or places where” and not the words “such absence being for the whole or any part of the period during which he is so required to work”. Hence the words terms of employment, would only refer to place or places of working of the employee and not the working period. Therefore the bank was justified to have deducted the wages for the part of the day.

In *Goodloss Nerolac Paints Limited Mumbai v. Paints Employees Union, Mumbai*,94 several settlements were signed between the respondent union and the petitioner paints company. The case of the respondent union is that as they did not toe the line of the management, the petitioner sponsored another union in its establishment and under some pretext or the other started deduction in the wages of workmen who were members of respondent union. Two workmen Puran and Ramesh who were skilled workers in varnish department although present on duty did not carry out the work allotted to them. Therefore, their wages were deducted on the basis of principle of “no work no pay” for that day. The union made a complaint and

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94. (2002) I LLJ 605 (Bom.)
Industrial Court found the employer guilty of practising unfair labour practice and directed the petitioner employer to remit the deducted wages. The present petition is against this order. The Workman had refused to do the job of filling of containers as it was to be done by a junior worker and not by a person of his seniority. Dismissing the petition the High Court held that in the circumstances as alleged by the workman that the job was to be done by a junior worker the petitioner company ought to have held an inquiry before effecting any deduction from wages of the concerned workman. The Company did not do so, hence the deduction of wages was not justified.

In view of the above discussion it can be concluded that the following are the objectives of the Payment of Wages Act –

(a) to ensure that the wages shall be paid in particular form.

(b) wages shall be paid at regular intervals.

(c) unlawful and unauthorised deductions from wages is prohibited.

The deductions specified under the Payment of Wages Act, 1936 will also be applicable on inter-state migrant workmen as it is mentioned in The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Central Rules, 1980 that wages shall be paid
without any deduction of any kind except permissible under the Payment of Wages Act, 1936.95

3.5 Employees' Compensation Act, 1923

Employees' Compensation Act is another piece of legislation providing protection to the migrant workers also. The growing complexity of industry in India, with the increasing use of machinery and consequent danger to workmen, along with the comparative poverty of the workmen themselves, rendered it advisable that they should be protected, as far as possible from hardship arising from accidents. In June, 1922 a committee was constituted. After considering the numerous replies and options received by the Government of India, the committee was unanimously in favour of legislation, and drew up detailed recommendations.96

On the recommendations of the committee the Workman's Compensation Act was enacted in 1923 and enforced on 1st July, 1924. Since then a number of amendments have been made from time to time so as to suit the changing needs and conditions of the workmen. The nomenclature of the Act has been amended by substituting the word 'Employees' for the word

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95. Rule 32, The Inter-State Migrant Workmen Central Rules, 1980.
"workmen's." Now the Act stands as The Employees' Compensation Act, 1923. This Act is applicable on all persons who are employee as per the definition clause of this Act. The Schedule II of this Act deals with the list of persons who are included in the definition of employees. This schedule gives a vast scope to the definition of the "employee" and includes almost all kind of employments in its preview. Naturally, the migrant workmen will also fall under this definition and get the benefit of this Act.

**3.5.1 Burden of Proof**

The burden shall be upon the claimant to prove that he was a workman within the meaning of this section. However, the onus would be on the employer to prove that the condition which is necessary for the purpose of excluding a person from the category of workman exists. Every person employed by day, week, month or year is within the definition of a workman.

The main objective of the Act is to impose an obligation upon the employers to pay compensation to workers for accidents arising out of and in the course of employment. The Act applies to any person who is employed otherwise than in clerical capacity, in railways, factories, mines, plantations, mechanically propelled

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98. Section 2(1)(dd) of the Employees' Compensation Act, 1923.
vehicles, loading and unloading work on a ship, construction, maintenance, repairs of roads and bridges, electricity generation, cinemas, circus and other hazardous occupations and other employments specified in schedule II of the Act. The Act exempts the employees covered under Employees State Insurance Act, as disablement and dependant's benefits are available under that Act and also members serving in Armed Forces. Being a social security legislations, this Act shall also be applied to the migrant workers working in factories, plantation, construction and other hazardous occupations.

Prior to the amendment of 2009 this Act was known as Workmen's Compensation Act, 1923. This Act provides for the payment of compensation to workmen for injuries sustained in accidents. This Act has four schedules. Schedule I of the Act provides the list of the injuries with percentage of loss earning capacity. This schedule has two parts. Part I provides list of the injuries deemed to result in permanent total disablement and Part II provides the list of injuries deemed to result in permanent partial disablement. But if the injury sustained is not an injury mentioned in the schedule then the loss of earning capacity has to be proved by the workmen. The majority of the workers who are not insured under the E.S.I scheme are

100. Schedule I of The Employees' Compensation Act, 1923.
covered under Employees’ Compensation Act, 1923. Schedule II provide the list of persons who are employee subject to the provisions of the Act. This Act does not apply on the person not listed in schedule II, and there is no relief available to the employee if injury has taken place when the worker was not actually engaged in discharging duties related to the employer’s trade or business. The employer is liable to provide monetary compensation to the worker or dependent in case of the death or disablement provided it occurs out of and in the course of employment. The burden of proving that the accident arose out of employment is upon the worker. This Act has been enacted for the financial help by way of compensation to the worker. Supreme Court has also recognized that it is a welfare legislation for the workers. In *Sunita Devi v. Avtar Singh*\(^{101}\) the Jharkhand High Court said that it is well-settled that the Employees’ Compensation Act, 1923 is a piece of social security and welfare legislation. Its dominant purpose is to protect the workman and therefore, the provisions of the Act should not be interpreted too narrowly so as to debar the workman from compensation which the parliament thought they ought to have. The intention of the legislature was to make the employer an insurer of the workman responsible against the loss caused

\(^{101}\) [2004] 104 FJR 1007 (Jhar).
by injuries or death, which ought to have happened while the workman was engaged in his work. But despite all the above thing the method of claiming compensation for disability is so long and tortuous that one rarely gets the compensation to which one is entitled by law. Any qualified medical practitioner can certify the case. The commissioner decides the case and the revenue department recovers the amount of compensation. But workers, who are in the unorganized sector, often find it very difficult to prove who is their employer and as a result cases are prolonged, and often workers die without receiving any compensation. The Employees' Compensation (Amendment) Act 2009 that came into effect in January 2010 provides for compensation even to casual workers. The minimum amount of compensation for death has been enhanced from Rs. 80,000 to Rs. 1,20,000 and for total disablement from Rs. 90,000 to Rs. 1,40,000.

The relationship of employer and workman is established if the employer has some measure of control and could regulate the action of the employee during the time he is engaged in doing his work.102

In Chintaman Rao v. State of M.P.,103 there was an agreement between the management of a Bidi Company and

103. AIR 1958 SC 388.
an independent contractor that the contractor would receive tobacco from the management and supply them rolled in bidis for consideration. He could manufacture bidis wherever he pleased and his liability was discharged by delivering bidis in the factory. The contractor was not under the control of management of the factory and had not to work in the factory. The contractor was held by the Court not to be employed by the management as a workman but was an independent contractor who performed his part of contract by making bidis and delivering them at the factory.104

3.5.2 Requisite Conditions for Compensation

The purpose of the Employees' Compensation Act is not to provide for solarium to the workman or his dependents but to make good the actual losses suffered by him.105 Compensation is in the nature of insurance of the workman against certain risk of accident. The rule, that in order to make the employees liable to pay compensation, death or injury must be the consequence of an accident arising out of and in the course of his employment, is dependent upon the following four conditions:

1. A casual connection between the injury and the accident, and the accident and the work done in the course of employment is essential.

(2) The onus lies upon the claimant to establish that the injury or its aggravation was the outcome of the work and resulting strain.

(3) It is not necessary that the workman must be actually working at the time of his death or that death must occur while he is working or has just ceased to work.

(4) If the evidence adduced shows greater probability which satisfies a reasonable man that the work contributed to the causing of personal injury, it would be sufficient ground for the workman to succeed in his claim.

In order to claim compensation under the Act, the employee must prove that the accident arose out of and in the course of employment. Calcutta High court has held that the expression 'arising out of employment' implies that the workman’s employment must be distinctive and, proximate cause of his personal injury and the expression does not mean only, that the personal injury must have rested merely from ‘the nature of’ his employment and is not limited to cases where the personal injury’ is referable to the nature of his employment, that is to say the duties he has to discharge. Thus, the personal injury is not held to have arisen out of employment which a workman received while playing in the ground of the factory where he was obliged to remain in idleness while another shift was
working and before his turn of beginning work had arrived.\textsuperscript{106}

In *Ravuri Kotayya v. Dasari*,\textsuperscript{107} Andhra Pradesh High Court has held that the following principles can be applied in order to determine whether an accident has arisen out of and in the course of employment of the workman or not—

1. That the workman was in fact employed on, or performing the duties of his employment at the time of the accident.

2. That the accident occurred at or about the place where he was performing these duties or where the performance of these duties required him to be present.

3. That the immediate act which led to or resulted in the accident had some form of the causal relation with the performance of these duties and such causal connection could be held to exist if the immediate act which led to the accident is not so remote from the sphere of his duties.

The expression 'arising out of' conveys the idea that there must be some sort of connection between the employment and the injury caused to the workmen as a result of the accident. The expression is wide enough to cover cases where there may not be a direct connection

\textsuperscript{106} Central Glass Industries Ltd., v. Abdul Hassain, AIR 1948 Cal 12.
\textsuperscript{107} AIR 1962 AP 42.
between the injury caused as a result of an accident and the employment of the workmen.

Supreme Court in *M. Mackenzie v. I.M. Issak*,\(^{108}\) has said that the words 'arising out of employment' are understood to mean that during the course of the employment, injury has resulted from some risk incidental to the duties of the service which unless engaged in the duty owing to the master it is reasonable to believe the workman would not otherwise have suffered. There must be a causal relationship between the accident and employment. If the accident had occurred on account of a risk which is an incident of the employment the claim for compensation must succeed unless of course the workman has exposed himself to do an added peril by his own imprudence.

In *Oriental Insurance Co. Ltd., v. Sorumai Gogoi*,\(^{109}\) the Supreme Court observed that there was nothing on record to show that death had occurred to the driver in an accident arising out of employment. If some miscreants had taken away the driver along with the vehicle or had murdered him, it did not give rise to a presumption that death had occurred in accident arising out of employment.

\(^{108}\) AIR 1970 SC 1906.

\(^{109}\) 2008 II LLJ 803 (SC).
In *National Iron and Steel v. Manorarna*, a boy employed in the company's tea shop to serve tea to factory men, while returning to the shop after serving tea passed a mob of factory men who were attacking the police. The police in self-defence fired and the boy was wounded and died the next day. It was held that the accident arose in the course of employment.

Death of a dissel assistant by quarrelling with colleagues while on duty, will be an accident. Death due to insecticide poisoning on duty will be an industrial accident. Death of security guard by shifting motor cycle from school ground will justify accident compensation. A supervisor supervising loaders and unloaders from goods train meeting with an accident at 10 p.m. while going to home will be treated accident arising out of and during the course of employment. No compensation in absence of causal link between employment and accident. Compensation payable when deceased after washing vehicle at river, went for a dip and drowned. Dependants not entitled to compensation on death due to heart

110. AIR 1953 Cal 143.
failure.\textsuperscript{117} A driver driving from Delhi to a place near Jharkhand must have suffered health set back while driving for such a long journey. Hence his death will be treated as an accident.\textsuperscript{118}

Part A of Schedule III contains five types of occupational diseases, (i) Infectious and parasitic are occupational diseases which may be contracted in an employment (a) involving exposure to health or laboratory work, (b) involving exposure to veterinary work, (c) relating to handling animals or animal carcasses, part of such carcasses or merchandise which may have been contaminated by animals or animal carcasses, (d) involving a particular risk of contamination, (ii) Diseases are caused by work in compressed air, (iii) Diseases are caused by lead or its toxic compounds, (iv) Poisoning by nitrous fumes is a peculiar occupational disease that is contacted in an employment of any process involving exposure to nitrous fumes, (v) Poisoning by organic phosphorus compounds is contacted in an employment that requires or process to be carried by the use or handling or exposure to the fumes, dust of vapour containing any of the organic phosphorus insecticides. In \textit{Management of Durga Plasthe v. Govt. of NCT of Delhi},\textsuperscript{119} it was held that evidence on record did not

\begin{itemize}
\item \textsuperscript{117} Sankar Lal v. Sunil Kumar Saha, 2012 LLR 1060 (Gan).
\item \textsuperscript{118} Param Pal Singh v. M/S National Insurance Co., 2013 I LLJ 520 (SC).
\item \textsuperscript{119} 2013 I LLJ 160 (Del).
\end{itemize}
support the case of management that injury of workman was not suffered in course of employment, and award of compensation was upheld as proper.

## 3.5.3 Doctrine of Added Peril

The principle of added peril means that if a workman while doing his employer's work, trade or business engages himself in some other work which he is not ordinarily required to do under the contract of his employment and which act involves extra danger, he cannot hold his master liable for the risk arising therefore.¹²⁰

Ordinarily a man's employment does not begin until he has reached the place where he has to work and does not continue after he has left the place of his employment. The period of going to or returning from employment are generally excluded and are not within the course of employment. Travelling to and from is prima facie not in the course of employment.¹²¹ But there may be reasonable extension in both the time and place and a workman may regarded as in the course of his employment even though he had not reached or had left his employer's premises.¹²² It has been recognised time and again that the sphere of a workman's employment is not necessarily limited to the actual place where he does his work. If in going to or

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¹²⁰ Bhurangya Coal Co., v. Sahebjan, AIR 1956, Pat. 299.
coming from his work he has to use an access which is part of his employer's premises, or which he is entitled to traverse because he is going to or coming from his work, he is held to be on his master's business while he is using that access.

In *St. Helens Colliery Co. Ltd., v. Hewlston*, 123 a workman working in a colliery was injured while travelling in a special collier's train. The railway company had by an agreement with the colliery company agreed to arrange for such a special train running between the colliery and the place of residence of the workmen. Each workman was provided with a pass and the amount of fare was deducted from his wages. It was held that the injury did not arise in the course of employment within the meaning of the English Workmen's Compensation Act, 1906 for the following reasons:

1. There was no obligation on the workmen to use the train. The workmen had a right to travel by such train but were not bound to travel by such train. They could have travelled by any other alternative means. Any workman of colliery was free to avail of the privilege or not. Had he been bound by the contract of his service to travel by such train, he would have been in the course of employment.

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123. 1924 A.C. 59 (B)
2. If the physical features of the locality had been such that the means of transit offered by the employer would have been the only means of transit to transport the workman to his work, there may in the workman’s contract of service be implied a term that there was an obligation on the employer to provide such means and a reciprocal obligation on the workman to avail himself of them.

3. A workman in a colliery is not in the course of his employment, when he is riding in a vehicle provided by his employer unless, by the terms of his contract, he is bound to travel in that vehicle.

In *Varadarajulu v. Masaya Boyarn*\(^ {124}\) the employer was a contractor for the formation of a road and the deceased was a coolie mistry under him. The workman suffered injury by capsizing of the lorry belonging to the contractor and driven by his driver when the said lorry was conveying the workmen to the workspot. It was held:

"Where the kind of transport provided by the employer was the only means available to workmen, the accident was held to be in the course of employment because not only the lorry provided by the employer was merely a reasonable means of transport, but also that

\(^ {124}\) AIR 1954 Mad. 1113.
there was no other means of conveyance to and from the workspot being a hilly tract.”

In *Weaver v. Tredegar Iron Coal Co.*\(^{125}\) the appellant, a minor in the employment of the respondents worked at a pit which was near a branch railway where there was no regular station but where by an agreement between the company and Railway, facility for boarding the train was given only to the company’s employees at the time of change of shifts in the colliery. On leaving the colliery one day, the appellant went to the platform in order to travel home by train, but while there, owing to rush of workmen on the platform, he was accidentally pushed off on to the line and was injured by an approaching train. On a claim for compensation it was held that as the appellant was making use of the platform which the respondents had arranged to be provided for their workmen coming to and leaving the colliery, and as he was upon premises which the respondents for the purposes of the employment, had obtained for him a licence to use, and on which he had no right to be except by the condition of his employment, the accident arose out of and in the course of his employment, and he was, therefore, entitled to compensation.

\(^{125}\) 1940 A.C. 955.
3.5.4 No Revision of Compensation

Compensation may be fixed either by settlement or by award. Once the compensation has been fixed, it can't be revised on the ground of subsequent aggravation of a permanent disability. Compensation once fixed operates forever except in cases covered by section 6 of the Act, which provides for making subsequent change in the amount of compensation on the ground of change in circumstances. But the scope of section 6 is limited only to half monthly payment which is prescribed by the Act for only temporary disablement. No review on the ground of aggravation of disability is maintainable even under sections 17, 19 and 22 of this Act.126

3.5.5 Contributory Negligence is no Ground for Reduction of Compensation

Contributory negligence is not a ground under the Act for reducing the amount of compensation if the accident has arisen in the course of employment. Contributory negligence on the part of the workman does not exonerate the master from his liability to pay compensation. While disobedience of rules and safety devices, etc., is a ground for exemption in case of injury other than death but mere negligence of a workman cannot be regarded as willful disobedience to an order expressly given. In a case where a

motor driver running with a high speed dashed with a tree and was thereby killed by accident the employer cannot escape from his liability simply because such an accident was caused by rash and negligent driving. The driver might have been in excessive speed but dashing of the vehicle with a tree cannot be said to have been brought with any previous design. It was held that “an accident means some unexpected event happening without design even though there may be negligence on the part of the workman who suffers from it. Hence, once it is proved that the accident was caused in the course of employment, the question of negligence, great or small, is irrelevant.”

In Ramarao Zingraji Shende v. Indian Yarn Manufacturing Company, Ramarao was working in the respondent company. The appellant was specifically instructed to operate the machine from the northern side but he tried to operate the machine from southern side where gear exists and was injured. Besides, the safeguard was also fitted with bolt to the machine and workers were instructed not to remove the safety guard. According to management appellant has in disobedience of instructions removed the safety guard. It was also displayed on the notice board that before the machine is started, the worker

128. Ibid.
129. (1993) 1 LLJ 442 (Bom).
should satisfy that safety guards are affixed and if there are no safety guards the worker should get it affixed and then start work. In spite of the above facts it was held not to be a case of wilful disobedience. It was held that no amount of negligence in doing employment job can change the workman into unemployment job. Mere negligence cannot be regarded as wilful disobedience by the workman to an order expressly given. To decide whether an occurrence is an accident, it must be regarded from the point of view of the workman who suffers from it and if it is unexpected and without design on his part it may be an accident. In the present case the workman met with, an accident while performing his duty, though not in a diligent manner, but the fact remains that his two fingers have been crushed, still he is entitled to the compensation.

A workman, an employee in a raw mill, received injuries on his finger, was given treatment by the employer and re-employed. Later on the injury developed into tetanus and the workman died due to negligence. It was held that compensation payable to the widow can't be reduced on the ground of contributory negligence.\textsuperscript{130}

3.5.6 Employer Responsible for Compensation

This Act provides that if personal injury is caused to an employee by accident arising out of and in the course of

\textsuperscript{130} P.C. Abdulla Kutty v. C. Janaki, AIR 1953 Mad. 837.
his employment, his employer shall be liable to pay compensation. However, in case of partial or total temporary disablement of the employee, it should be for a period exceeding three days and it should not inflicted when the victim was under the influence of drink or drugs or avoiding safety measures provided by the employer. In all of these cases, employer will not be liable. If the employee contracts any occupational disease specified in Part A of Schedule III of this Act or comes into such contact with any of the occupational disease specified in Part B of Schedule III, if such employee has been employed for a continuous period of not less than six months and in any employment specified in Schedule III Part A or B respectively, then also the employer will be liable for the compensation as if an injury by accident caused to the employee.\textsuperscript{131}

In\textit{ New Indian Assurance Company Ltd. v. Tejinder Kaur and Others,\textsuperscript{132}} the High Court has laid down that the definition of 'dependants' lays down that no application for settlement can be made other than by the dependent or dependents. In the definition, married sister is not one of the dependants therefore married sister of the deceased cannot maintain application under the Act for the grant of compensation.

\textsuperscript{131} Section 3, \textit{The Employees' Compensation Act, 1923.}
\textsuperscript{132} 2015 III LLJ 84 (P & H).
In *Laxmidhan Kumbhar v. D.M., Orissa Forest Development Corporation Ltd.*,\(^{133}\) it has been held by the Orissa High Court that unless it is proved that the accident had a causal connection with the employment and it was suffered in course of employment, the claimant is not entitled to get any compensation.

In has been held by Madras High Court in *A. Ganesan Matriculation Higher Secondary School v. Kadan & Others*\(^{134}\) that provision of section 12(1) of the Employees' Compensation Act, would apply notwithstanding the agreement or contract entered into between the principal employer and contractor regarding their liability for payment of compensation under the Act. Section 12(2) of the Employees' Compensation Act, confers right on the principal employer, who is made liable to pay compensation under the provisions to get himself indemnified by the contractor and in such circumstances, both the principal employer and the contractor would be jointly and severally liable to pay compensation. The claimants can always exercise their option. Regarding the quantum of compensation, in case death results from the injury, it shall be an amount equal to fifty percent of the monthly

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133. 2015 I LLJ 131 (Ori).
134. 2015 Lab IC 2772 (Mad).
wages of the deceased workman multiplied by the relevant factor.\footnote{M/S New India Assurance Co. Ltd., v. Muhammed the and others, 2015 Lab IC 2332 (Ker).}

In view of the above discussion it is clear that a migrant workman who suffers some injury because of the accident arising out of and in the course of his employment shall be compensated according to the provisions contained in Employees' Compensation Act.

### 3.6 Equal Remuneration Act, 1976

In Part IV relating to Directive Principles of State Policy of the Constitution it is advocated that the State shall direct its policy, among other things, towards securing that there is equal pay for equal work for both men and women.\footnote{Article 39, Constitution of India.} In order to give effect to this provision, in the year, which was being celebrated as the International women’s year, President of India promulgated the Equal Remuneration Ordinance, 1975 on 26\textsuperscript{th} September, 1975 to provide for the payment of equal remuneration to men and women workers and for the prevention of discrimination on the ground of sex, against woman in the matter of employment. To replace the said ordinance of 1975 the Equal Remuneration Bill was introduced in the Parliament.\footnote{The Equal Remuneration Act, 1976, Universal Law Publishing Co. Ltd., Ltd., New Delhi, 2013, p. 1.} It came on the Statute
Book as the Equal Remuneration Act, 1976 and came into force on 8.3.1976.

In *Randhir Singh v. Union of India*,\(^{138}\) the Supreme Court held that the principle of equal pay for equal work though not a fundamental right as certainly a Constitutional goal and therefore capable of enforcement through Constitutional remedies under Article 32 of the Constitution.

In *Surinder Singh v. Engineer in Chief*,\(^{139}\) the Supreme Court held that daily wagers are entitled to the same wages as other permanent employees in the department employed to do the identical work.

3.6.1 **Meaning of Same Work or Work of a Similar Nature**

As per this Act any work in respect of which the skill, effort and responsibility required are the same, when performed under similar working conditions, by a man or a woman and the differences, if any, between the skill, effort and responsibility required of a man and those required of a woman are not of practical importance in relation to the terms and conditions of employment will be considered as same work or work of a similar nature.\(^{140}\) It is important to mention here that to be a work of same or similar nature it

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139. AIR 1986 SC, 534.
is necessary that the skill, effort and responsibility and working conditions are same. If working conditions are different then the concept of equal pay for equal work will not be applicable. There may be a situation when one worker works during night hours or in disturbed areas or in adverse climate or whether conditions or faces other adversities. Such a worker can’t be compared with some other worker who is required to do the same kind of work under all normal situations or circumstances. Likewise hon’ble Supreme Court in Mackinnon Mackenzie and Co. v. Audrey D’Costa\(^1\) held that a broad approach should be taken in deciding whether the work is the same or of a similar nature. In doing so the duties actually and generally performed by men and women and not those theoretically possible, should be looked at.

The Supreme Court has held that the expression “same work or work of similar nature” lays stress upon the similarity of skill, effort and responsibility when performed under similar working conditions. The equality of work may vary from institution to institution. It is a matter of proof and not of assumption.\(^2\)

Discussing the concept of ‘equal pay for equal work,’ the Supreme Court in Ashok Kumar Garg v. State of

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1. \((1987) 2\) SCC 469.
Rajasthan,\textsuperscript{143} has held that the question of equal work depend on various factors like responsibility, skill, effort and condition of work. Burden of proof lies upon the workman claiming 'equal wages for equal work'.\textsuperscript{144}

Again it has been held by the Supreme Court that the principle of 'equal pay for equal work' would not apply where educational qualification and other considerations such as source of recruitment and nature of work done vary between two classes of employees, although nature of work done is the same.\textsuperscript{145} 'Equal pay for equal work' is not applicable in abstract.\textsuperscript{146} ‘Equal pay for equal work’ not to apply when two units are in different parts of India.\textsuperscript{147}

\textbf{3.6.2 Overriding Effect of the Act}

This Act has overriding effect on any other law or terms of any award, agreement, contract of service or any instrument having effect under any law for the time being in force, if such other law, terms of award, agreement, contract of service, instrument, has anything inconsistent with this Act.\textsuperscript{148} Here in this Act the word "notwithstanding" has been used which gives this Act an overriding effect. In \textit{Mackinnon Mackenzie and Co. v.}

\begin{itemize}
\item \textsuperscript{143} (1994) 3 SCC 357.
\item \textsuperscript{144} \textit{U.P. State Electricity Board v. Aziz Ahmad}, (2009) 2 SCC 606.
\item \textsuperscript{145} \textit{Government of West Bengal v. Tarun K. Roy}, 2004 I LLJ 421.
\item \textsuperscript{146} \textit{N.D.M.C. v. NDMC General Mazdoor Union}, 2012 LLR 1020 (Del).
\item \textsuperscript{147} \textit{Hyderabad Cement Products Ltd., v. Mgmt. of M/S Hyderabad Industries Ltd.}, 2011 LLR 1269 (Jhar).
\item \textsuperscript{148} Section 3, \textit{The Equal Remuneration Act}, 1976.
\end{itemize}
Audrey D’Costa,\textsuperscript{149} it was held by the Supreme Court that a settlement arrived at between the management and the employees cannot be a valid ground for effecting discrimination in payment of remuneration between male and female employees performing the same work or work of a similar nature.

After going through the above provisions it is evidently clear that the Equal Remuneration Act shall also be applied to the establishments employing migrant workers.

3.7 The Unorganised Workers’ Social Security Act, 2008

The Act primarily aims at providing social security and welfare to unorganized sector workers. The words “unorganized sector” in the Act holds an exhaustive definition which can be made applicable to all sections apart from organized sectors where social security measures already exist. Unorganized sector is defined in the Act as, “home based worker, self employed worker, or a wage worker in the unorganized sector.” It really includes almost every category other than organized sector. Honourable former; Chief Justice of India K.G. Balakrishnan aptly highlighted the objectives of the Act in the following words: “Needless to say, the millions of

\textsuperscript{149} (1987) 2 SCC 469.
unorganized workers are in dire need of a stable and reliable social security regime. The Unorganised Workers' Social Security Act contemplates the delivery of benefits to unorganized workers in instances of sickness, disability, maternity, unemployment, old age and the death of a family's bread winner. The Act has defined 'Unorganised workers' in a wide and liberal manner so as to include those who are casually employed and receive daily or monthly wages as well as 'home-based workers' and even farmers who work on small land-holdings. Hence, the legislative intent is to expand the social safety net as widely as possible." The benefits proposed are, (1) life and disability cover (2) health and maternity benefits (3) old age protection generally and any other benefit as determined by Central Government. The Act envisages that the state Government may formulate suitable welfare schemes including provident fund, employment injury benefit, housing, educational schemes for children, skill up gradation of workers, funeral assistance and old age homes which may be wholly funded either by Central Government or shared by Central and State Government or along with contribution from employees also. The machinery, for implementing these schemes will consist of a National Social Security Board and State-level Social Security Boards. These Boards will perform the tasks of supervising
the collection of contributions, maintenance of Social Security Funds and ensuring the proper dispersal of benefits. The nodal role will be played by the District-level authorities who will be responsible for the registration of workers for the scheme and unique identification cards will be issued to the intended beneficiaries. In keeping with the philosophy of decentralization, the actual registration of workers will be performed by worker facilitation centre (WFC) which is to be run Panchayati Raj Institutions.

The unorganised sector account for over 90% of our work force. Their percentage is likely to increase. They are as entitled to protection and welfare/security as workers in the organised sector, who are often describe today as the privilege sector of the workforce. The laws that exist today hardly touch the work force in the unorganised sector. It is therefore necessary to enact new legislation to cover workers working in this sector. There is a wide variety of employments in this sector. Conditions vary, and levels of organization vary the nature of the relations with employers vary. There is an expanding sector of those who are self-employed, or on contract, and work from homes. It is difficult to have separate laws for each employment. This will only result in endless multiplication of laws, and oversight of one or the other of the employment. The Unorganised Workers Social Security Act, 2008 came into
force w.e.f. 16th May 2008 with the sole aim of providing social security to the unorganised workers. Under this Act, the definition of unorganised worker has been enlarged to include all such workers which are not covered by the existing social security legislation like Employees' Provident Fund Act. This Act makes it mandatory for the Central Government to formulate from time to time suitable welfare schemes for unorganised workers on matter relating to :-

(i) Life and disability cover
(ii) Health and maternity benefits
(iii) Old age protection
(iv) Any other benefits as may be determined by the Central Government.

It provides for the registration of unorganised workers so as to facilitate the formulation of social security schemes for particular occupations. This Act requires the Central Government to constitute a National Board (for a term of 3 years) to be known as National Social Security Board to exercise the power conferred on, and to perform the functions assigned to it under the Act. It also provides for the constitution of similar board at the state level. Schedule I of this Act includes the following schemes as the welfare schemes:-
1. Indira Gandhi national old age pension scheme
2. National family benefit scheme
3. Janni Suraksh Yojana
4. Handloom weaver's comprehensive welfare scheme.
5. Handicraft Artisans' Comprehensive Welfare Scheme
6. Pension to master craft persons
7. National scheme for welfare of fishermen and training and extension
8. Janshree Bima Yojana
9. Aam Admi Bima Yojna
10. Rashtiyrya Swasthya Bima Yojana

Definition of unorganized worker – not clear

According to Section 2(m) of the Act, the unorganised worker means a home based worker, self employed worker or a wage worker in the unorganised sector and

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150. Section 2(b) of the Act defines "home based worker" as a person engaged in the production of goods or services for an employer in his or her home or other premises of his or her choice other than the workplace of the employer, for remuneration, irrespective of whether or not the employer provides the equipment, materials or other inputs.

151. According to Section 2(k) of the Act "self employed worker" means any person who is not employed by an employer, but engages himself or herself in any occupation in the unorganised sector subject to a monthly earning of an amount as may be notified by the Central Government or the State Government from time to time or holds cultivable land subject to such ceiling as may be notified by the State Government.

152. According to Section 2(n) of the Act "wage worker?" means a person employed for remuneration in the unorganised sector, directly by an employer or through any contractor, irrespective of place of work, whether exclusively for one employer or for one or more employers,
is subject to the condition of a ceiling or monthly earning
which is not defined in the Act.

**Social security schemes - not defined**

There is no clarity in the Act as to what the state
means by ‘Social Security’ or any of the benefits it
proposes. It is laid down in the Act that the government
would periodically notify schemes related to life and
disability cover, health and maternity benefits, old age
protection and any other benefit as may be determined by
the Central Government. Schedule I of the Act consists of
ten such schemes like *Aam Admi Bima Yojana, Rashtriya
Swasthya Bima Yojana, Janshree Bima Yojana, Janani
Suraksha Yojana*, old age pension, family benefit schemes
related to weavers, artisans and master crafts person. It is
essential and pertinent to mention here that these schemes
are not new and are mostly applicable only for Below
Poverty Line families. Contrary to it, the government
should make an endeavour to give maximum benefits of
these schemes to the maximum number of unorganised
workers.
Social security boards are toothless

Chapter II and IV of the Act are devoted to formation of National Social Security Board and State Social Security Board for unorganised workers respectively. But the role performed by these boards is only recommendatory and advisory in nature. They are not competent or empowered to take decisions on their own. It is upto the government to accept or not to accept the recommendations made by the board. These boards may review issues relating to the registration of workers and monitor schemes notified by the government. In fact, the board has no power, no authority over anything. Therefore it can be said that the boards are toothless. These boards are also very large. These attempts raise serious questions on the commitment of the government about the delivery of social security benefits to the unorganised workers. In view of the above, if the government is really concerned with the welfare of unorganised workers, it is essential to confer some powers on these boards so that they may take effective decisions in favour of unorganised workers.

Ambiguity in the title of the Act

The word "Sector" occurring in the original Unorganised Sector Workers Social Security Bill, 2007 was

153. The then Union Labour Minister, Mr. Oscar Fernandes’ main achievement is that he managed to get rid off the 'National Advisory Boards' and replaced it with the formation of National and State Social Security Boards.
dropped and the Bill was changed to Unorganised Workers' Social Security Act, 2008. Prima facie it appears that the informal workers/unorganised workers working in organised sector are also covered by the Act. It is also laid down in the Act that unorganised worker also includes a worker in the organised sector who is not covered by any of the Acts mentioned in Schedule II of this Act.

It clearly implies that a lot of casual and contract workers working in organised sector will be put outside the scope and purview of the present Act. Therefore, it is the need of the hour to take care of the interests and welfare of the above mentioned casual and contract workers.

*Unpaid women workers are excluded*

Unpaid women workers are not covered by the Act because they do not fall within the definitions of self employed workers, wage workers or home based workers. According to these definitions, getting wages or monthly earnings are condition precedent for being considered as unorganised workers. Therefore, the thing which gives pain is that the monetary value of women's work is not measured. However, it should not be a reason for denying social security to women workers. Moreover, the problems

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of security, sexual harassment, proper accommodation for migrant women workers, issues relating to nature of work and industrial safety, gender wage gap, non payment of wages, child care facilities at work spot etc. have been totally ignored.

*Unorganised workers deprived of other existing benefits*

It is pertinent and relevant to mention here that many labour laws in India are of universal application to all workers irrespective of the number of workers working in the establishment. But it is laid down in Section 2(m) of the Act that the unorganised worker "include a worker in the organised sector who is not covered by any of the Acts mentioned in Schedule II of the Act."  

It leads to the inference that the benefits under The Employees' Compensation Act and the Maternity Benefit Act are now denied to the workers working in establishment employing less than ten workers.

Therefore, it is clearly evident that Section 2(m) of the Act limits the applicability of the Acts mentioned in Schedule II. In other words it can be said that Section 2(m) takes away certain rights all workmen enjoy *de jure*.

*Social Security-not justiciable*

A right is justiciable if the aggrieved party can seek remedy in a Court of law, in case it is violated. But to make

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a right justiciable it should be clearly defined. The object of the Act is to provide social security and welfare to the unorganised workers, but it does not confer any defined right to social security for them. The schemes relating to social security are mentioned in Schedule I of the Act. This clearly means that these schemes can be changed at any time by way of a notification, and not after discussion in the Parliament. This denies the unorganised workers the benefit of consistency and justiciability. It is also a fact that these schemes are arbitrarily changed by the government through administrative notifications. Therefore, it is submitted that the content of the schemes should not be changed without the approval of the Parliament. Moreover, the government should not change the schemes unilaterally.

No Social Security Fund

It is very surprising to know that the Act does not provide for the creation of a social security fund for unorganised workers, even though the Parliamentary Standing Committee has made the following observation:

The committee feels that social security schemes cannot just work without any statutory backing and assured resources allocation. It would not be proper to tailor the schemes or reduce their number on the consideration of funds. Funds
flow system for the schemes has been kept virtually undefined and wide open thereby allowing total flexibility to the government in the matter of deciding and operationalising the schemes as per its convenience. Thus, the committee are inclined to infer that an *ad hoc* approach has been adopted on such an important aspect of the Bill. This will only make the schemes dysfunctional. The Committee, therefore, strongly recommends that a proper, transparent and institutional mechanisms devising clear and unambiguous methodology for generating resources be laid down paving the way for creation of a National Social Security and Welfare Fund. The Committee are of the opinion that creation of National Social Security and Welfare Fund will ensure permanency, continuity and sustainability of social security benefits. Therefore, the Act should have provided for the creation of a social security fund and a financial memorandum for budgetary allocation for the fund.

*No mechanism for implementation of the Act*

The Act has been introduced by the Ministry of Labour, the social security schemes mentioned in Schedule
I are managed by various ministries. Section 8 of the Act gives the record keeping functions of the provision of social security for unorganised workers to the district administration, the Panchayats and to the local urban bodies. Labour administration has no role to play in the implementation of the Act. This is very painful. Therefore, a modal ministry is essential for its effective implementation.

*No grievance redressal machinery*

The Act does not provide for a grievance redressal mechanism, even though it was strongly recommended by the Parliamentary Standing Committee on Labour. Grievance redressal mechanism is a *sine qua non* for the fair and effective implementation of an Act. Moreover, there is no provision for penalties in the Act to punish those employers who violate the provisions of the Act. In addition to it, there would be no action against the bureaucrats who refuse to register any unorganised worker under any of the scheduled schemes. These problems are required to be taken care of.

### 3.8 The Maternity Benefit Act, 1961

The Maternity Benefit Act is intended to achieve the object of doing social justice to women workers. Therefore, in interpreting the provisions of the Act beneficial rule of construction has to be adopted by the Court.\(^\text{156}\)

\(^{156}\) *B. Shah v. Labour Court, Coimbatore*, AIR 1978 SC 12.
This Act is a social legislation enacted for the welfare of the working women. The Act prohibits working of the pregnant women for a specified period before and after delivery. It also provides for maternity leave and payment of monitory benefits for women workers during the period when they are out of employment due to pregnancy. The services of women worker cannot be terminated during this period in her absence except in case of gross misconduct. The maximum period for maternity benefit is fixed as 12 weeks, six weeks before delivery and 6 weeks immediately after delivery.

A woman worker who expects a child is entitled to maternity benefit for a maximum period of twelve weeks which is split up into two periods viz., pre-natal and Post-natal.

In B. Shah v. Labour Cour, Combatore, the question was whether Sunday is to be counted in calculating the amount of maternity benefit. It was held that in the context of sub-sections (1) and (3) of Section 5, the terms week has to be taken to signify a cycle of seven days including Sundays. The Legislature intended that computation of maternity benefit is to be made for the entire period of the woman worker's actual absence, i.e., for all the days, including Sundays, which may be wageless holidays falling

within that period and not only for intermittent periods of six days thereby excluding Sundays falling within that period. Again the word ‘period’ occurring in Section 5(1) seems to emphasize the continuous running of time and recurrence of the cycle of seven days. This computation ensures that the woman worker gets for the said period not only the amount equalling 100 per cent of the wages which she was previously earning in terms of Section 3(n) of the Act but also the benefit of the wages for all the Sundays and rest days falling within the aforesaid two periods which would ultimately be conducive to the interest of both the woman worker and her employer.\textsuperscript{158}

In \textit{Rain Bahadur Thakur (P) Ltd. v. Chief Inspector of Plantations,}\textsuperscript{159} the point for determination by the Court was whether in calculating 160 days period which will entitle a woman employee to get maternity, benefit, the work on half days can be included or not. It was held that according to Explanation to Section 5(2) of the Maternity Benefit Act, the period during which a woman worker was laid off should also be taken into consideration for ascertaining the eligibility. During the lay-off period a woman worker cannot be expected to have actually worked in the establishment. So, actual work for 160 days cannot be insisted as a condition precedent for claiming the maternity benefit.

\textsuperscript{158} \textit{Ibid.}
\textsuperscript{159} (1989) II LLJ 20 (Kerala).
Since the Maternity Benefit Act is a social welfare legislation, therefore, by way of giving liberal interpretation to it, the Courts have extended the benefits of this Act to the migrant workers working in factories, plantation, construction, agriculture and other establishment employing migrant workers.

After going through all the legislations discussed above, it can be concluded that only umbrella protection has been provided to the migrant workers which constitute a big portion of the total work force. It is also evidently clear that inspite of the legislations discussed above, the migrant workers are subject to exploitation and their condition is very miserable because of the fact that these legislations are quite meaningless for them. Since they are not united and consequently they cannot go for collective bargaining, therefore, they cannot dare to raise their demands against the non-implementation of these legislations by their employers. In such situation they have the fear of losing their jobs which they cannot afford at any cost. In addition to above, very poor implementation of these legislations for the purpose of migrant workman is another bane for the migrant workers. Moreover, these legislations are also suffering from certain lacunas. Therefore it is the need of the hour that more and more laws providing protection to the migrant workers should be
enacted having a strong and effective enforcement mechanisms so that the conditions of migrant workers may be improved in a welfare State.