Chapter-4
CONSTITUTIONAL GOAL AND LEGISLATIVE ENACTMENTS

The word ‘Constitution’ has derived from the Latin word ‘Constitutio’, which means regulations or orders. A Constitution can briefly be defined as fundamental living principles having special legal sanctity, which sets out the framework and the principal functions of various organs of the State and laying the principles of their Governance. According to Thomas Paine, "Constitution is a thing antecedent to Government and a Government is only the creature of a constitution. The constitution of a country is not the act of its Government, but of the people constituting a government". The Constitution may be written e.g. the constitution of the United States, or unwritten e.g. the Constitution of the Britain. In every country, constitution can be termed as a comprehensive document. It is the supreme and fundamental law of the land and the state shall not make any law or guidelines which is in contravene or inconsistent with the spirit of Constitution. The very fact that the Constitution of Indian Republic is the product not of a political revolution but of research and deliberation of a body of eminent representatives of the people, who sought to improve upon the existing systems of administration, makes a retrospect of the constitutional development indispensible for a proper understanding of this Constitution.¹⁸⁸

4.1. Constitutional Goal

The Britishers ruled India for about 190 years. The struggle for independence was thus over by 15th August, 1947. But the attainment of independence was not an end itself. It was only the beginning of a struggle, the struggle to live as an independent nation and, at the same time, establish a democracy based on the ideas of justice, liberty, equality and fraternity. The need of a new Constitution forming the basic law of the land for the realization of these ideas was paramount.¹⁸⁹ Thereafter, the Independence Act was also passed in 1947. The Constituent Assembly in 29th August, 1947 was set up a drafting committee consisting of seven members headed by the chairmanship of Dr. B.R.Ambedkar. The Committee has to frame the Draft

Constitution and submitted it before the Constituent Assembly on 21st February, 1948. In the Draft Constitution several provisions of the Government of India Act, 1935 were incorporated. The members of the Constituent Assembly after thoroughly discussion of the Draft have suggested 7635 Amendments. But, its take a period of time of 2 years 11 months and 18 days for making the Constitution of India. The Constitution of India was adopted on 26th day of November, 1949 and it came into force on 26th day of January, 1950. At the time of enactment, the Constitution was consisted of 395 Articles, 22 Parts and 9 Schedules. But now it has 448 Articles, 25 Parts and 12 Schedules with 98 amendments. It is called the World lengthiest written Constitution.

The Constitution contains several provisions started with Preamble. The fundamental rights provisions contained in part-III and Directive Principles of State Policy contained in part-IV of the Constitution. Both the Fundamental Rights and the Directive Principles of State Policy are acting together as the chief instrument and conscience of the Constitution of India in realizing the goals set by it for all the people. Accordingly Part-IV-A of the Constitution provides about the fundamental duties of the citizens. The Constitution set out several provisions for the protection of the rights of workers in India. The important provisions are enumerated below:

4.2. Preamble of the Constitution of India

The Constitution of India is called the ‘Lex- Loci’ i.e. the law of the land. Under the Constitution of India, Labour is fallen under the subjects of Concurrent List and therefore, both the Central and the State governments are competent to enact legislations subject to certain matters being reserved for the Centre. The Constitution of India provides so many provisions for the protection of the rights of the workers. The Preamble of the Constitution of India says about the justice of social, economic and political, and equality of status and opportunity to all the citizens of India. It is an introductory and explanatory statement in a document that explains the document's purpose and underlying philosophy. It is considered as the key to understand the constitution. When applied to the opening paragraphs of a law enacted by legislative body, it may recite historical facts pertinent to the subject of the statute. It is distinct from the long title or enacting formula of a law. The Preamble of our constitution is the introductory statement set out the guiding purpose and principal of the
Constitution. It is based on the Objective Resolutions presented by Jawaharlal Nehru in the constituent assembly. Proper function of a Preamble is to explain certain facts which are necessary to be explained before the enactments contained in the Act can be understood. Preamble is not an integral part of the Indian constitution was once decided upon by the Supreme Court of India in the BeruBari case; therefore it is not enforceable in a court of law. However, the Supreme Court of India has, in the Kesavananda Bharati case, recognized that the preamble may be used to interpret ambiguous areas of the constitution where differing interpretations present themselves. Supreme Court held that the Preamble is an integral part of the Constitution. The preamble-page, along with other pages of the original Constitution of India, was designed and decorated solely by renowned painter Deodhar Rammanohar Sinha. As such, the page bears Deodhar Rammanohar Sinha's short signature Ram in Devanagari lower-right corner.

4.3. Provisions of fundamental rights

Part-III of the Constitution provides about fundamental rights. Article 14 provides about 'equality before law' and 'equal protection of law'. In this regard Dr. Jennings aptly remarked that “equality before law means that among equals the law should be equal and should be equally administered, that like should be treated alike’. Equal protection of law means that all persons similarly circumstance shall be treated alike both in the privileges conferred and liabilities imposed by law. Regarding the concept of equality the Hon'ble Supreme Court in Dalmia Cement (Bharat) Ltd vs. Union of India, has held that the concept of equality and equal protection of laws guaranteed by article 14 in its spectrum encompass social and economic justice in a political democracy. Article 15 prohibits discrimination on the grounds of religion, race, caste, sex, place of birth, whereas Article 15(3) provides special provisions for women and children. The question of identifying the 'educationally and socially backward classes' for purposes of article 15(4) has been a very difficult one, and yet no acceptable criteria to define the same have been evolved.

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190 Singh, Adithya, 'Preamble of Constitution of India and its significance' and also available at: http://lex-warrier.in/2013/07/preamble-of-indian-constitution/
191 AIR 1960 SC 845
192 AIR 1973 4SCC 225
Article 19(1) (a) provides about freedom of speech and expression and whereas, 19(1)(g) clearly express that all the citizens shall have freedom to practice any profession, or to carry on any occupation, trade or business, and Article 19(1)(d) provides about to moves out freely within the territory of India, but there shall be reasonable restrictions under Article 19(2)-(6) in the interests of the Sovereignty and integrity of India, the security of the State, friendly relations among foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence. Article 21 provides the protection of right to life and personal liberty; i.e. no person shall be deprived of his/her right and personal liberty except according to procedure established by law.

In Olga Tellis and Ors vs. Bombay Municipal Corporation, the Hon’ble Supreme Court has observed that, it is these men and women who have come to this Court to ask for a judgment that they cannot be evicted from their squalid shelters without being offered alternative accommodation. They rely for their rights on Article 21 of the Constitution which guarantees that no person shall be deprived of his life except according to procedure established by law. They do not contend that they have a right to live on the pavements. Their contention is that they have a right to live, a right which cannot be exercised without the means of livelihood. They have no option but to flock to big cities like Bombay, which provide the means of bare subsistence. They only choose a pavement or a slum which is nearest to their place of work. In a word, their plea is that the right to life is illusory without a right to the protection of the means by which alone life can be lived. And, the right to life can only be taken away or abridged by a procedure established by law, which has to be fair and reasonable, not fanciful or arbitrary such- as is prescribed by the Bombay Municipal Corporation Act or the Bombay Police Act. They also rely upon their right to reside and settle in any part of the country which is guaranteed by Article 19(1) (e)195. Article 21A inserted by 86th Constitutional Amendment Act, 2002 clearly mentioned that the State shall provide free and compulsory education to all children of the age of 6-14 years in such manner as the State may, by law, determine, and Article 23 of the Constitution prohibits traffic in human beings and forced labour such as beggar. Article 23(1) of the Constitution prohibits “begar” and other similar forms of forced

195 https://indiankanoon.org/docfragment/709776

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labour and further provides that any contravention of the said prohibition shall be an
offence punishable in accordance with law.

Article 35 (a) (ii) of the Constitution not only confers the power on parliament to
provide for punishment for the contravention of the said provisions of Article 23 (1)
but expressly takes away the power of the State legislature to make any legislation
with regard to the said matter. Accordingly, the Bonded Labour System (Abolition)
Ordinance was promulgated in 1975. By the said Ordinance, the bonded labour
system was abolished and the bonded labourers were freed and discharged from any
obligation to render any bonded labour and their bonded debts were also extinguished.

The Ordinance further affords protection to the free bonded labourers from eviction
from their homestead. Contraventions of the Provisions of the Ordinance have been
made offences punishable in accordance with law. Article 24 clearly mentioned about
prohibition of employment of children in factories and other construction and also
states that no children below the age of 14 years shall be employed to work in any
factory or mine or employed in any other industry. Article 32 provides about the right
to move the Supreme Court by appropriate proceedings for enforcement of
fundamental rights granted under Part-III of the Constitution.


The various directives (social-economic charter and community welfare charter) of
Part- IV of the Constitution has clearly mentioned about State policy regarding the
protection of the workers right, viz; Article 38 clearly mentioned it is the duty of the
State to secure a social order for the promotion and welfare of the people. Article
39(a) provides that the citizens, men and women equally, have the right to an
adequate means of livelihood, and whereas, Article 39(d) address about equal pay for
equal work for both men and women. The provisions of Article 39(e) clearly
mentioned that the health and strength of workers, men and women, and the tender
age of children are not abused and that citizens are not forced by economic necessity
to enter avocations unsuited to their age or strength. Article 39A inserted by
Constitution 42nd Amendment Act, 1976 and directs the State to ensure equal justice
and free legal aid to the indigent person; i.e. justice should reach at the door step to
the poor individual.
Article 41 provides that it is the duty of the State, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want, and whereas Article 42 says about just and humane conditions of work and maternity relief. Article 43 mentioned about living wages for workers, and clearly states that it is the duty of the State endeavour to secure, by suitable legislation or economic organization or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State endeavour to promote cottage industries or an individual or co-operative basis in rural areas. Article 43A inserted by the Constitution 42\textsuperscript{nd} Amendment Act, 1976, sec.8 (w.e.f. 3-1-1977), provides that it is the duty of the State take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organisations engaged in any other industry. Article 45 substituted by Constitution 86\textsuperscript{th} Amendment Act, 2002 clearly mention about provision for early childhood care and education to children below the age of six years. Part IV A as fundamental duties, Article 51A (k) inserted by Constitution 86\textsuperscript{th} Amendment Act, 2002 stated about the duty of every citizen of India who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six to fourteen years.

4.5. Legislative Enactments

Under the Constitution of India, Labour is a subject in the concurrent list where both the Central and State Governments are competent to enact legislations. As a result, a large number of labour laws have been enacted catering to different aspects of labour namely, occupational health, safety, employment, training of apprentices, fixation, review and revision of minimum wages, mode of payment of wages, payment of compensation to workmen who suffer injuries as a result of accidents or causing death or disablement, migrant workers, bonded labour, contract labour, women labour and child labour, resolution and adjudication of industrial disputes, provision of social security such as provident fund, employees' state insurance, gratuity, provision for
payment of bonus, regulating the working conditions of certain specific categories of workmen such as plantation labour, beedi workers etc.\textsuperscript{196}

The labour enactments in India, is divided into 5 broad categories, viz. Working Conditions, Industrial Relations, Wage, Welfare and Social Securities. The enactments are all based upon Constitution of India and the resolutions taken in ILO conventions from time to time. Indian labour law refers to laws regulating employment. There over fifty national laws and many more state-level laws. Traditionally Indian Governments at federal and state level have sought to ensure a high degree of protection for workers through enforcement of labour laws. While conforming to the essentials of the laws of contracts, a contract of employment must adhere also to the provisions of applicable labour laws and the rules contained under the Standing Orders of the establishment.\textsuperscript{197}

\section*{Purpose of Labour Legislation}

Labour legislation that is adapted to the economic and social challenges of the modern world of work fulfils three crucial roles:

- it establishes a legal system that facilitates productive individual and collective employment relationships, and therefore a productive economy;

- by providing a framework within which employers, workers and their representatives can interact with regard to work-related issues, it serves as an important vehicle for achieving harmonious industrial relations based on workplace democracy;

- it provides a clear and constant reminder and guarantee of fundamental principles and rights at work which have received broad social acceptance and establishes the processes through which these principles and rights can be implemented and enforced.

But experience shows that labour legislation can only fulfills these functions effectively if it is responsive to the conditions on the labour market and the needs of

\textsuperscript{196} http://planningcommission.nic.in/aboutus/committee/wrkgrp11/wg11_rplabr.pdf
\textsuperscript{197} http://adapt.it/adapt-indice-a-z/wp-content/uploads/2014/09/Labour_Employment_Laws_India.pdf
the parties involved. The most efficient way of ensuring that these conditions and needs are taken fully into account is if those concerned are closely involved in the formulation of the legislation through processes of social dialogue. The involvement of stakeholders in this way is of great importance in developing a broad basis of support for labour legislation and in facilitating its application within and beyond the formal structured sectors of the economy.

4.6. The Workmen's Compensation Act, 1923

This Act was enacted during the Colonial rule in India. This Act provides about the compensatory measure to the workers who are engaged in the various establishments. The Act also aims to provide for the payment of certain classes of employers to their workmen of compensation for injury by accident. The workmen's compensation Act 1923 is one of the earliest pieces of labour legislation. This act encompasses all cases of accidents arising out of and in course of employment. The rate of Compensation to be paid in a lump sum is determined by a schedule provided in the act proportionate to the extent of injury and the loss of earning capacity. The younger the age of the worker and higher the wage the greater is the compensation. The Act provides the formula for calculating the compensation. The injured person can claim compensation and in the case of death, the compensation is claimed by dependents of the deceased. This law applies to the organized as well as unorganized sectors that are not covered by the E.S.I. scheme.

This Act also define and address about the important terms as such, the partial disablement [S. 2(1) (g)], total disablement [S.2 (1) (I)], and Employer's liability for compensation (S.3) in this part the Act provides that, if personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Act. It is further provided that the employer shall not be so liable-

(a) in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding (three) days;

(b) in respect of any injury, not resulting in death or permanent total disablement caused by an accident which is directly attributable to –

(i) The workman having been at the time thereof under the influence of drink or drugs, or

(ii) The willful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen, or

(iii) The willful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workman.

The Act also applicable for the migrant workers engaged in any establishment, factories or any construction work. If any injury caused to the workers in the course of employment then it is the duty of the employer to provide appropriate compensation to the workers according to the provisions of the Act.

4.7. The Payment of Wages Act, 1936

The Payment of Wages Act was enacted as early as 1936 during the colonial rule. The purpose of this Act is to regulate payment of wages. This insists on the payment of wages by the seventh day or the tenth day of the succeeding month and in case of weekly payment the last day of the week. The Act provides various provisions regarding payment of wages as such:

Payment of Wages- Section 3 of the Act stated that every employer shall be responsible for the payment to person employed by him of all wages required to be paid under this Act.

Fixation of wage-periods (S.4)- (1) Every person responsible for the payment of wages under section 3 shall fix periods (in this Act referred to as wage-periods) in respect of which such wages shall be payable.

(2) No wage-period shall exceed one month.
Time of payment of wages (S.5) - (1) the wages of every person employed upon or in –

(a) Any railway, factory or (industrial or other establishment) upon or in which less than one thousand persons are employed, shall be paid before the expiry of the seventh day,

(b) Any other railway, factory or (industrial or other establishment), 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:

Provided that in the case of persons employed on a dock, wharf or jetty or in a mine, the balance of wages found due on completion of the final tonnage account of the ship or wagons loaded or unloaded, as the case may be, shall be paid before the expiry of the seventh day from the day of such completion.

(2) Where the employment of any person is terminated by or on behalf of the employer, the wages, earned by him shall be paid before the expiry of the second working day from the day on which his employment is terminated.

Provided that where he employment of any person in an establishment is terminated due to the closure of the establishment for any reason other than a weekly or other recognized holiday, the wages earned by him shall be paid before the expiry of the second day from the day on which his employment is so terminated.

(3) The State Government may, by general or special order, exempt, to such extent and subject to such conditions as may be specified in the order, the person responsible for the payment of wages to persons employed upon any railway (otherwise than in a factory or to persons employed as daily-read workers in the Public Works Department of the Central Government or the State Government) from the operation of this section in respect of the wages of any such persons or class of such persons:

Provided that in the case of persons employed as daily-rated workers as aforesaid, no such order shall be made except in consultation with the Central Government. So the various provisions of Act attracted to migrant workers those are engaged in railways, factories and construction works on daily rated basis and any other.
4.8. The Employee State Insurance Act, 1948

The Act aims to provide for certain benefits to employees in case of sickness, maternity and employment injury and to make provisions for certain other matters in relation thereto. The Employees State Insurance Act provides a scheme under which the employer and the employee must contribute a certain percentage of the monthly wage to the Insurance Corporation that runs dispensaries and hospitals in working class localities. It facilitates both outpatient and in-patient care and freely dispenses medicines and covers hospitalization needs and costs. Leave Certificates for health reasons are forwarded to the employer who is obliged to honor them. Employment injury, including occupational disease is compensated according to a schedule of rates proportionate to the extent of injury and loss of earning capacity. Payment, unlike in the Workmen's Compensation Act, is monthly. Despite the existence of tripartite bodies to supervise the running of the scheme, the entire project has fallen into disrepute due to corruption and inefficiency. Workers in need of genuine medical attention rarely approach this facility though they use it quite liberally to obtain medical leave. There are interesting cases where workers have gone to court seeking exemption from the scheme in order to avail of better facilities available through collective bargaining. The Act is beneficial for the social protection of migrant workers.

Section 26 of the Act is very important and which discuss about Employees' State Insurance Fund-

(1) All contributions paid under this Act and all other moneys received on behalf of the Corporation shall be paid into a fund called the Employees' State Insurance Fund which shall be held and administered by the Corporation for the purpose of this Act.

(2) The Corporation may accept grants, donations and gifts from the Central or any State Government, local authority, or any individual or body whether incorporated or not, for all or any of the purposes of this Act.

(3) Subject to the other provisions contained in this Act and to any rules or regulations made in this behalf, all moneys accruing or payable to the said Fund shall be paid into the Reserve Bank of India or such other bank as may be approved by the Central
Government to the credit of an account styled the account of the Employees' State Insurance Fund.

(4) Such account shall be operated on by such officers as may be authorized by the standing Committee with the approval of the Corporation.

4.9. Factories Act, 1948

The Act aims to consolidate and amend the law regulating labour in factories. The Factories Act is meant to provide protection to the workers from being exploited by the greedy business employments and provides for the improvement of working conditions within the factory premises. The main function of this act is to look after the welfare of the workers, to protect the workers from exploitations and unhygienic working conditions, to provide safety measures and to ensure social justice. The Factories Act deals with various provisions to provide protection and safeguards to the workers engaged in the factory. The Act also protects the rights of the migrant workers engaged in the factory work. The important provisions of the Act are enumerated below:

- **Safety**

  Section 21 to 40 of the said Act deals with the safety measures. Safety measures undertaken by the employer in the industrial site or in the factory is very important to avoid accident in the work places. Safety measures ensure that the workers are somehow in the safe zone. Important provisions of the safety measures are that: Proper Fencing of machinery (S.21), Precautions - Work on or near machinery in motion (S.22), no Employment of young person's on dangerous machines (S.23), Prohibition of employment of women and children near cotton-openers (S.27), Provision for Lifting machines, chains, ropes and lifting tackles (S.29), Protection near revolving machinery (S.30), Safety of buildings and machinery (S.40).

- **Welfare**

  Section 42 to 49 provides about the Welfare provisions. Welfare is the basic fundamental in any kinds of working establishment. The important provisions of
welfare measures are: Providing Washing facilities (S.42), Providing Facilities for storing and drying clothing (S.43), First-aid appliances to be kept (S.45), Canteens at subsidized rates (S.46), Shelters, rest rooms and lunch rooms for workmen (S.47) etc.

The aforesaid provisions of the Factories Act are also equally applicable to the migrant workers engaged in the factories and establishment. The safety and welfare provisions are very important to protect the rights of the migrant workers.

4.10. The Minimum Wages Act, 1948

The Minimum Wages Act 1948 is to provide for fixing the minimum rates of wages. Minimum wages are fixed by the State Governments based on the cost of living index on hourly basis, day basis, monthly basis and any larger period. The Minimum wages thus fixed is below poverty line and has to restructured and reconsidered by the officials. It is very essential to provide the minimum wages to the workers engaged in any establishment. Section 3 of the Act provides about fixing minimum rate of wages and the appropriate authority of the Government shall, in the manner hereinafter provided:

(a) Fix the minimum rate of wages payable to employees employed in an employment.

(b) Review at such intervals, as it may think fit, such intervals not exceeding five years, the minimum rate of wages so fixed and revise the minimum rates, if necessary.

It is further provided that where for any reason the appropriate Government has not reviewed the minimum rates of wages fixed by it in respect of any scheduled employment within any interval of five years, nothing contained in this clause of the Section 3 shall be deemed to prevent it from reviewing the minimum rates after the expiry of the stipulated period of five years and revising them, if necessary, and until they are so revised the minimum rates in force immediately before the expiry of the stipulated period of five years shall continue in force. The minimum rates of wages may be fixed on the basis work by the hour, day basis work and by the month.
4.11. The Maternity Benefit Act, 1961

The Act aims to regulate the employment of women in certain establishments for certain period before and after child-birth and to provide for maternity benefit and certain other benefits. The migrant workers also get benefit under this Act. The important provisions of the Act are as follows:

The Act prohibits the employment of a woman in any establishment during the six weeks immediately following the day of her delivery, (miscarriage or medical termination of pregnancy). No women shall work in any establishment during the six weeks immediately following the day of her delivery (Section 4). The matter relating to the rights to payment of maternity benefits are placed in Section 5 of the Act and which provides that, 5(1) Subject to the provisions of this Act, every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence, that is to say, the period immediately preceding the day of her delivery, the actual day of her delivery and any period immediately following that day.

(2) No woman shall be entitled to maternity benefit unless she has actually worked in an establishment of the employer from whom she claims maternity benefit, for a period of not less than (eighty days) in the twelve months immediately preceding the date of her expected delivery. Provided that the qualifying period of (eighty days) aforesaid shall not apply to a woman who has immigrated into the State of Assam and was pregnant at the time of the immigration.

(3) The maximum period for which any woman shall be entitled to maternity benefit shall be twelve weeks of which not more than six weeks shall precede the date of her expected delivery. Provided that where a woman dies during this period, the maternity benefit shall be payable only for the days up to and including the day of her death ; Provided further that where a woman, having been delivered of a child, dies during her delivery or during the period immediately following the date of her delivery for which she is entitled for the maternity benefit, leaving behind in either case the child, the employer shall be liable for the maternity benefit for that entire period but if the child also dies during the stipulated period, then, for the days up to and including the date of the death of the child.
4.12. The Payment of Bonus Act, 1965

The Act aims to provide for the payment of bonus to persons employed in certain establishments on the basis of profits or on the basis of production or productivity and for matters connected therewith. Section 8 of the Act provides about eligibility for bonus and states that every employee shall be entitled to be paid by his employer in an accounting year, in accordance with the provisions of this Act provided the employee worked in the establishment for not less than thirty working days in that year. Section 10 of the Act provides for payment of minimum bonus - subject to the other provisions of this Act, every employer shall be bound to pay to every employee in respect of the accounting year commencing on any day in the year 1979 and in respect of every subsequent accounting year, a minimum bonus which shall be 8.33 percent of the salary or wage earned by the employee during the accounting year or one hundred rupees, whichever is higher, whether or not the employer has any allocable surplus in the accounting year.

Section 11 of the Act provides about the Payment of maximum bonus, where in respect of any accounting year referred to in section 10, the allocable surplus exceeds the amount of minimum bonus payable to the employees under that section, the employer shall, in lieu of such minimum bonus, be bound to pay to every employee in respect of that accounting year bonus which shall be an amount in proportion to the salary or wage earned by the employee during the accounting year subject to a maximum of twenty percent of such salary or wage.


In the present day world globalization is increasing at a very high pace and it is resulting in profit oriented economies which in turn leads to the promotion of contract labour. The concept of contract labour can be understood from the following example, suppose A is an industrialist and he want to build a factory and for this he hires a person B to get the job done. This person B hires other people X, Y and Z to build the factory. Now it is not necessary that X, Y and Z should be hired by B with the permission of A. A may not even know about this contract but B acting as a mediator has got into a contract with other people to get A’s work done. These people X, Y and
Z who have no direct contact or relationship with ‘A’ are the contract labourers. Contract labourers also suffer from inferior labour status, casual nature of employment, lack of job security and poor economic conditions. It is also observed that in some cases the contract labourers did the same work as the workers directly employed by the industrialist but were no paid the same wages and the same working conditions. This practice of contract labour has also lead to the exploitation of these labourers as they are not employed directly under the employer. This practice of exploitation was and still is very much prevalent in India\(^9\). So in a simple and logistic way we can say that the Contract Labour (Regulation & Abolition) Act, 1970 has been enacted to regulate the employment of contract labour and to bring them at par with directly employed labour with regard to the working conditions and other benefits and also to provide for abolition of contract labour in certain circumstances\(^0\). The Act provides about the constitution of Central Advisory Board under Section 3 and the State Advisory Board under Section 4 of the Act. The power of both the Board are very similar in nature, the Boards have the power to constitute the committees (S.5) for the purposes as it may think fit. The Committees constitute under Section 5 of the Act shall meet at such times and places and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be prescribed.

Section 6 of the Act stated about the appointment of registering officers. The appropriate Government may, by an order notified in the Official Gazette-

(a) Appoint such persons, being Gazetted Officers of Government, as it thinks fit to be registering officers

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

Section 7 of the Act provides about the Registration of certain establishments-

(1) 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 the prescribed manner for registration of the establishment: Provided that the registering officer may entertain any such application for registration after expiry of the period fixed in this behalf, if the registering officer is satisfied that the applicant was prevented by sufficient cause from making the application in time.

(2) If the application for registration is complete in all respects, the registering officer shall register the establishment and issue to the principal employer of the establishment a certificate of registration containing such particulars as may be prescribed.

Whereas, section 10 of the Act stated about prohibition of the employment of the contract labour on circumstances arises thereon and if a question arises whether any process or operation or other work is of perennial nature, the decision of the appropriate Government thereon shall be final.

Section 11 provides about the appointment of the licensing officer, the appropriate Government may appoint such a persons, being Gazetted officer of the Government, as it thinks fit to be licensing officer and the procedure of licensing contractors are provide in Section 12 of the Act.201


The Act was passed after 29 years later of Independence. Regarding the enactment of the Act, the root lies in the Article 23 of the Constitution of India which state about ban on beggar and other forms of forced labour. The main purpose of the Act to renders all bonded labour systems (agreements, pacts, traditions, customs etc.) to be null and void and hence frees all bonded labours from their debt to the creditors. It also bans any person shall pursue or compel a person to enter into forced labour or a bonded labour system. Victims of bonded labour are not liable to repay their debt, and any property that was taken from the bonded labourer is to be restored. All legal proceeding against bonded labourer for inability to repay their debt or abide by the bonded system is dismissed. As per the law, the bonded labour cannot be evicted from


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his home even when the bonded system has been dissolved. Creditors are not permitted to accept any payments and those who do are punishable up to three years of imprisonment or fine.\textsuperscript{202} The important provisions of the Act are enumerated below:

Section 4 of the Act provides about the abolition of bonded labour system, whereas it states- (1) on the commencement of this Act, the bonded labour system shall stand abolished any every bonded labourer shall, on such commencement, stand freed and discharged from any obligation to render any bonded labour.

(2) After the commencement of this Act, no person shall-

(a) Make any advance under, or in pursuance of, the bonded labour system, or

(b) Compel any person to render any bonded labour or other form of forced labour.

Section 6 of the Act provides about the liability matter, i.e. liability to repay bonded debts stand to be extinguished. Under which every obligation of a bonded labourer to repay any bonded debt have been extinguished no suit or other proceeding shall lie for the recovery of any such debt. Every decree or order for the recovery of bonded debt shall be deemed to have been fully satisfied. Every attach made for the recovery of bonded debt shall stand vacated. If possession of any property belonging to a bonded labourer or a member of his family or other dependent was forcibly taken over by any creditor for the recovery of the bonded debt, such property shall be restored.

Section 7 of the Act states about the property of the bonded labourer to be freed from mortgage, i.e. any property vested in a bonded labourer which was under any mortgage, charge, lien or other encumbrances in connection with any bonded debt stands freed and discharged and if the possession of the said property was with the mortgagee or other holder of the charge, lien or encumbrance will be restored to the possession of the bonded labourer. Whereas Section 8 provides that freed bonded labourer not to be evicted from homestead, i.e. no person who has been freed and discharged from any obligation to render any bonded labour will be evicted from any

homestead or other residential premises as part of the consideration for the bonded labour.

Section 10 of the Act states about the implementing authorities of the provisions of the Act and specifically mentioned that, the State Government may confer such powers and impose such duties on a District Magistrate as may be necessary to ensure that the provisions of this Act are properly carried out and the District Magistrate may specify the officer, subordinate to him, who shall exercise all or any of the powers, and perform all or any of the duties, so conferred or imposed and the local limits within which such powers or duties shall be carried out by the officer so specified.203

4.15. Equal Remuneration Act, 1976

The Equal Remuneration Act, 1976 aims 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 women in the matter of employment and for matters connected therewith or incidental thereto. The provisions of the Act have been extended to all categories of employment. The Act extends to whole of India.

- The main provisions of the Act

- No employer shall pay to any worker, employed by him/ her in an establishment, a remuneration (whether payable in cash or in kind) at rates less favourable than those at which remuneration is paid by him/ her to the workers of the opposite sex in such establishment for performing the same work or work of a similar nature. Also, no employer shall, for the purpose of complying with the provisions of this Act, reduce the rate of remuneration of any worker.

- No employer shall, while making recruitment for the same work or work of a similar nature, or in any condition of service subsequent to recruitment such as promotions, training or transfer, make any discrimination against women except where the employment of women in such work is prohibited or restricted by or under any law for the time being in force.

Every employer shall maintain such registers and other documents in relation to the workers employed by him/her in the prescribed manner.

If any employer: (i) makes any recruitment in contravention of the provisions of this Act; or (ii) makes any payment of remuneration at unequal rates to men and women workers for the same work or work of a similar nature; or (iii) makes any discrimination between men and women workers in contravention of the provisions of this Act; or (iv) omits or fails to carry out any direction made by the appropriate Government, then he/she shall be punishable with fine or with imprisonment or with both.

Where an offence under this Act has been committed by a company, every person who at the time 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.  

4.16. Inter-State Migrant Workmen (Regulation of Condition and Services) Act, 1979

It is an Act of the Parliament of India enacted to regulate the condition of service of inter-state labourers in Indian labour law. The purpose of the Act is to protect workers whose services are requisitioned outside their native states in India. Whenever an employer faces shortage of skills among the locally available workers, the act creates provision to employ better skilled workers available outside the state. The Act extends to the whole of India and applies to every establishment in which (important to note as differing from some other labour laws), five or more inter-state migrant workmen are employed or who were employed on any day of the preceding twelve months. These inter-state migrant workmen are not in addition to other workmen. The Act also applies to every contractor who employs or who employed five or more inter-state migrant workmen on any day of the preceding twelve months.

205 Act No.30 of 1979
4.16.1. Reason behind the enactment of the Act

The employment system of interstate migrant labour was an exploitative system prevalent more or less in all over India. It was rampantly institutionalized in Orissa and in some other states. In Odisha, Dadan Labour is recruited from various parts of the State through contractors or agents called Sardars or Khatadars for work outside the state. At the time of recruitment, Sardars or Khatadars promise that wages calculated in piece-rate basis would be settled every month but usually this promise is never kept. Once the worker comes into the clutches of the contractor, he takes him to a far off place on payment of railway fare only. No working hours are fixed for these workers and they have to work on all the days in a week under extremely bad working conditions. The question of protection and welfare of Dadan Labour was considered by the Twenty-Eighth Session of the Labour Ministers’ Conference held on 26th October, 1976 at New Delhi.

It was recommended to set up a Compact Committee to go into the whole question and to suggest measures for eliminating the abuses prevalent in the system. Accordingly, in February, 1977, the Compact Committee was constituted and it recommended Inter Alia that a separate Central legislation may be enacted to regulate the employment of inter-state migrant workmen as it was felt that the provisions of the Contract Labour (Regulation and Abolition) Act, 1970, even after necessary amendments, would not adequately take care of the variety of mal practices indulged in by the contractors, Sardars and Khatadars. The recommendations of the Compact Committee were examined in consultation with the State Governments and the Ministries in the Govt. of India. Accordingly the Inter-State Migrant Workmen (Regulations of Employment and Conditions of Service) Bill, 1979 was introduced in the Parliament, and it was passed by the both houses of Parliament and President of India gave his assent on 11th day of June, 1979.208

208 http://www.labdirodisha.gov.in/?q=node/88
4.16.2 Important Provisions of the Act

The Act has categorically divided into various chapters such as:

Chapter 1 of the Act mentioned about Short title, extent, commencement, application of the statute and definitions part. In the definitions part the Act provides about the definition of the Contractor, Inter-State Migrant Workmen, Wages, and Workmen etc.

Chapter 2 of the Act portrays about the registration of establishments employing the inter-state migrant workmen, whereas it includes appointment of registering officers (S.3), registration of certain establishment (S.4), revocation of registration in certain cases (S.5), prohibition against employment of inter-state migrant workmen without registration (S.6).

Chapter 3 of the Act highlights about the licensing of contractor and it includes appointment of licensing officer (S.7), licensing contractor (S.8), grant of licenses (S.9), revocation, suspension and amendment of licenses(S.10), provision for appeal (S.11) etc.

Chapter 4 of the Act provides about duties and obligation of the Contractors under Section 12 and also states that it shall be the duty of the every contractors to furnished particulars in a specified format to the appropriate authority of the State Government relating to the issue and matter of recruitment policy as such the numbers of workers are recruited and the places of their recruitment. It is also the duty of the contractor to issue the passbook to every workman and where there name should be written and photograph of the workers should be attached.

Chapter 5 of the Act stated about the wages, welfare and other facilities to be provided to the inter-state migrant workmen and it includes wage rates (S.13), displacement allowances (S.14), journey allowance (S.15), other facilities (S.16), responsibility of payment of wages (S.17), liability of the Principal employer in certain cases (S.18), and past liability (S.19).

Chapter 6 provides about the inspecting staff and it includes inspector (S.20) and here the inspector is appointed by the appropriate government, and it is the duty of the
inspector to verify the records, and inspect the work premises if there occurs any irregularity of any nature.

Chapter 7 of the Act highlights about the miscellaneous parts and it includes provisions regarding industrial disputes (S.22), registers and other records (S.23), obstruction (S.24), contravention of provisions regarding inter-state migrant workmen (S.25), other offences (S.26) etc. Let's discuss about the important relevant provisions of the Act:

- **Appropriate Government**

According to Section [2(1) (a)] of the Act, Appropriate Government means in relation to any establishment pertaining to any industry carried on by or under the authority of the Central Government or pertaining to any such controlled industry as may be specified in this behalf by the Central Government or any establishment of any railway, Cantonment Board, major port, mine or oilfield or any establishment of a banking or insurance company the Central Government. In relation to other establishment, the Government of the State in which other establishment is situated.

- **Contractor**

The term ‘contractor’ in relation to an establishment, means a person who undertakes (whether as an independent contractor, agent, employee or otherwise) 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 subcontractor, Khatadar, Sardar, agent or any other person, by whatever name called, who recruits or employs workmen [Section 2(1) (b)].

- **Establishment**

According to Section [2 (1) (d)] of the Act, the term ‘establishment’ means any office or department of the Government or a local authority or any places where any trade, industry, business, manufacture occupation is carried on.
- **Inter-State Migrant Workmen**

The term “inter-state migrant workmen’ means 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 principal employer in relation to such establishment [Section 2 (1) (e)].

- **Principal Employer**

The Act define ‘principal employer’ as – in relation to any office or department of the Government or local authority, the head of that office department or authority. But in relation to a factory, the owner or occupier of that factory and where a person named as the manager of that factory under the Factories Act, 1948. In case of a mine, the owner or agent of the mine and where a person has been named as the manager of the mine then the person concerned [Section 2 (1) (g)].

- **Workmen**

According to Section [2(1) (j)] of the term ‘workmen’ means any person employed in or in connection with the work of any establishment to do any skilled, semi-skilled or un-skilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied, but does not include any such person employed mainly in a managerial or administration capacity; or being employed in a supervisory capacity, draws wages exceeding five hundred rupees per mensem, or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

- **Registering officers**

The appropriate Government may, by notification in the Official Gazette, appoint registering officer for the purpose of the registration of the establishment and define their respective jurisdiction and power under the Act.
- **Grant and revocation of registration**

The Registering officer has the power to grant the registration application of the establishment if it is properly moved by the principal employer. Again the officer has the power to the registration of any defaulting establishment after giving an opportunity to the principal employer thereof to be heard and with the prior approval of the appropriate Government.

- **Prohibition against Employment**

The Act prohibits the employment of the inter-state migrant workmen by the employer without issuing any certificate of registration. In this regard the Act clearly stated about the issuance of registration certificate of the workmen.

- **Licensing officer**

The appropriate Government may, by notification in the Official Gazette, appoint licensing officers in regard to licensing of contractors and also define their respective limits of jurisdiction and powers under this Act.

- **Grant of licenses**

After proper inquiry and investigation the of establishment, and its location and the conditions of the agreement or other arrangement under which the workmen will be recruited, if the licensing officer properly satisfied then only he may grant licenses to the contractor of an establishment.

- **Revocation, suspension and amendment of licenses**

If the license granted under Section 8 of the Act, obtained by misrepresentation or suppression of any material facts, or the holder of a license has, without reasonable cause failed to comply with the conditions subject to which the licence has been granted or has contravened any of the provisions of this Act or the rules made there under, then, without prejudice to any other penalty to which the holder of the licence may be liable under this Act, the licensing officer may, after giving the holder of the licence an opportunity to be heard, by order in writing, revoke the licence or forfeit
the security furnished by him under the proviso to subsection (2) of section 8 or any part thereof and communicate the order to the holder of the licence. The authority also suspends and makes amend the license in certain situation when the contractor ready to comply with the terms and conditions provided under this Act. In case of suspension or revocation there is a provision of appeal before the appellate authority appointed by the appropriate Government.

- **Duties of the Contractors**

According to this Act the every contractors relating to the establishment shall submit the up to date report to the specified authorities. The report should contain:

a. The issuance of passbook with identity proof to the inter-state migrant workmen in relation to their work.
b. Name and place of the establishment wherein the workmen is employed.
c. The period of employment
d. The propose rates and modes of payment of wages.
e. Medical allowance and bonus payable
f. The displacement allowance payable
g. 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.
h. Deductions made and such other particulars as may be prescribed.

- **Responsibility for payment of wages**

The contractor in respect to any establishment is responsible to pay the proper wages to the inter-state migrant workmen employed in the establishment. The wages should be pay within the stipulated period. It shall be the duty of the contractor to ensure the disbursement of wages in presence of the authorized representative of the principal employer.
Liability of the principal employer

It is the duty of the contractor to provide every facility and allowances to the inter-state migrant workmen. If the contractor not complies with the above provisions then it is the sole responsibility of the principal employer to facilitate every welfare provisions to the inter-state workmen employed under the establishment.

Appointment of Inspector

The appropriate Government after notification in the Official Gazette appoints the inspector. It is the duty of the inspector to inspect or investigate the premises of the establishment, and collect report regarding the terms and conditions of work, report of wages in the place of engagement. The inspector also has the power to inspect the register book maintained in the establishment and if the register book contravenes the provisions of the Act then seize and take copies of such register.

Registers and other records to be maintained

It shall be the duty of every principal employer and every contractor to maintain the registers and record contain the particulars of the interstate 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.

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 authorized person and no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of first class shall try any offence punishable under this Act.

Power to remove difficulties and make rules

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. The appropriate Government may, subject to
the condition of previous publication, make rules for the carrying out the purposes of the Act.

4.17. The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Central Rules, 1980

The Government of India makes the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Central Rules, 1980 in exercise of the powers conferred by section 35 of the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979. The Rules shall come into force from the Second day of October, 1980. The important provisions of the Rules are summarily discussed below:

- **Issue of Certificate of Registration**

Rule 4 provides that where the registering officer registers of establishment, he shall issue to the principal employer a certificate of registration in Form II. 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.

- **Amendment of Certificate of Registration**

Rule 6 provides that where on receipt of the intimation 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.

- **Matters to be taken into account in granting or refusing a licence**

Rule 8 stated that in granting or refusing to grant a licence the Licensing Officer shall take into consideration of matters namely, whether the applicant is a minor, or is of unsound mind and stands so declared by a competent court, or is an un-discharged insolvent, or has been convicted at any time during the period of five years
immediately preceding the date of application, of an offence which, in the opinion of
the Central Government involves moral turpitude.

- **Particulars of migrant workman**

Rule 21 provides that every contractor shall furnish to the specified authorities the
particulars regarding recruiting and employment of migrant workmen in Form X. The
particulars shall be either personally delivered by the contractor to the concerned
specified authorities or sent to them by registered post.

- **Return fare**

Rule 22 stated that the contractor shall pay to the migrant workman the return 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 also on his-
(a) termination of service before the expiry of the period of employment for any
reason whatsoever;

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

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

(d) resignation from service on account of non-fulfillment of terms and conditions of
his employment by the contractor.

- **Rate of Wages**

Rule 25 provides about the rate of wages of a migrant workman in an establishment
where he is required to work which is neither same nor of 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 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 Act, 1948 for
the same or similar type of work performed by workmen in any 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.

4.18. Child Labour (Prohibition and Regulation) Act, 1986

The Act aims to prohibit the engagement of children in certain employments and to regulate the conditions of work of children in certain other employments. The Act also very relevant to protect the rights of the migrant children engages in the workplace. The important provisions of the Act are enumerated below:

Section 3 of the Act stated about prohibition of employment of children in certain occupations and processes - No child shall be employed or permitted to work in any of the occupations set forth in Part A of the Schedule or in any workshop wherein any of the processes set forth in Part B of the Schedule is carried on:

Provided that nothing in this section shall apply to any workshop wherein any process is carried on by the occupier with the aid of his family or to any school established by, or receiving assistance or recognition from, Government.

Section 7 of the Act provides for hours and period of work. - (1) No child shall be required or permitted to work in any establishment in excess of such number of hours as may be prescribed for such establishment or class of establishments.

(2) The period of work on each day shall be so fixed that no period shall exceed three hours and that no child shall work for more than three hours before he has had an interval for rest for at least one hour.

(3) The period of work of a child shall be so arranged that inclusive of his interval for rest, under sub-section (2), it shall not be spread over more than six hours, including the time spent in waiting for work on any day.

(4) No child shall be permitted or required to work between 7 PM and 8 AM.

(5) No child shall be required or permitted to work overtime.
No child shall be required or permitted to work in any establishment on any day on which he has already been working in another establishment.

Section 8 of the Act stated about weekly holidays - Every child employed in an establishment shall be allowed in each week, a holiday of one whole day, which day shall be specified by the occupier in a notice permanently exhibited in a conspicuous place in the establishment and the day so specified shall not be altered by the occupier more than once in three months.

Section 13 of the Act provides about health and safety, whereas it provides that the appropriate Government may, by notification in the Official Gazette, make rules for the health and safety of the children employed or permitted to work in any establishment or class of establishments.


The Act aims to provide for the constitution of a National Human Rights Commission, State Human Rights Commissions in States and Human Rights Courts for better protection of human rights and for matters connected therewith or incidental thereto. Be it enacted by Parliament in the Forty-fourth Year of the Republic of India. It extends to whole India. The important provisions of the Act briefly discussed below:

Section 2 of the Act define about the important term of ‘Human Rights’ and it includes the life, liberty, dignity and equality of the individual guaranteed under the Constitution of India and also embodied in the ICCPR and ICESCR.

Section 3 of the Act provides about the Human rights Commission and also states that the Central Government shall constitute the NHRC to exercise the power conferred upon and to exercise the powers assigned to it under the Act. Under section 21 of the Act provides that a State may constitute a body known as State Human Rights Commission to exercise the powers conferred on it and to perform the functions assigned to a State Commissioner.

209 Act No. 10 of 1994
210 http://indiacode.nic.in/fullact1.asp?tfhm=199410
Section 13 of the Act stated about the powers of the Human Rights Commission and also categorically mentioned that the Commission has the equivalent powers of a civil Court trying a suit under the Civil Procedure Code, 1908; and to require any person to furnish information on such points or matters subject to any privilege which may be claimed by that person under any law for the time being in force; and also enter into any building or place where the commission has reason to believe that any document relating to the subject matter or the inquiry may be found and may seize any such document or take extracts or copies there from subject to the provisions of Sec.100 of Criminal Procedure Code, 1973.

Section 21 of the Act provides about the Constitution of a State Human Rights Commission and also categorically mentioned that a State Government under this Act has empowered to constitute a State Human Rights Commission and the said Commission consists of – (a) a chairperson who has been a Chief Justice of a High Court (b) one member who is, or has been judge of a High Court (c) one member who is, or has been a district judge in that State (d) two members are to be appointed from amongst the persons having knowledge of, or practical experience in, matter relating to human rights.211


In building and other construction works more than eight million workers are engaged throughout the country. These workers are one of the most vulnerable segments of the unorganized labour in India. Their work is of temporary nature, the relationship between employer and the employee is temporary, working hours are uncertain. Basic amenities and welfare facilities provided to these workers are inadequate. Risk to life and limb is also inherent. In the absence of adequate statutory provisions to get the requisite information regarding the number and nature of accidents was quite difficult and due to this to fix responsibility or to take corrective measures was not an easy job. Although the provisions of certain Central Acts were applicable to the building and other construction workers yet a need was felt for a comprehensive Central Legislation for regulating the safety, welfare and other conditions of service of these

211 https://www.taxmanagementindia.com
workers. In pursuant to the decision of the 41st Labour Ministers Conference held on 18th May, 1995, the Committee of State Labour Ministers had expressed its consensus for the Central Legislation on this subject.

In order to regulate the employment and conditions of service of building and other construction workers and to provide for their safety, health and welfare measures the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Ordinance, 1995 (Ord. 14 of 1995) was promulgated by the President on 3rd November, 1995 as the Parliament was not in session. To replace this Ordinance a Bill was introduced in the Lok Sabha on 1st December, 1995. Since the Bill could not be taken up for consideration it lapsed. On 5th January, 1996 the President promulgated the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Ordinance, 1996 (Ord. 3 of 1996). To replace this Ordinance a Bill was introduced in the Parliament which could not be passed and the President promulgated the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Second Ordinance, 1996 (Ord. 15 of 1996) on 27th March, 1996. As this Ordinance could not be replaced by an Act of Parliament the President promulgated the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Third Ordinance, 1990 (Ord. 25 of 1996) on 20th June, 1996. In order to replace this Ordinance the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Bill was introduced in the Parliament.212 The Act aims to regulate the employment and conditions of service of building and other construction workers and to provide for their safety, health and welfare measures and other matters connected there with or incidental thereto. The important provisions of the Act summarized as follows:

Chapter I of the Act provides about Short title, extent and application of the Act and Definition section (S.2).

Chapter II of the Act provides about the Advisory Committees and Expert Committees and it includes central advisory committee (S.3), state advisory committee (S.4) and expert committee (S.5).

212 http://upbocw.in/english/staticpages/act_rules.aspx
Chapter III of the Act highlights about registration of establishments and it includes appointment of registering officers (S.6), registration of establishments (S.7), and revocation of registration in certain cases (S.8).

Chapter IV of the Act stated about registration of building workers as beneficiaries and it includes beneficiaries of the fund (S.11), registration of building workers as beneficiary (S. 12), identity cards (S.13).

Chapter V of the Act portray about building and other construction workers welfare boards and it includes constitution of state welfare board (S.18), functions of the board (S.22) etc.

Chapter VI provides about hours of work, welfare measures and other condition and service of building workers and whereas chapter VII sated about safety and health measures.

Chapter VIII of the Act highlight about inspecting staff and it include power of inspector (S.43) and whereas chapter IX of the Act provides about special provisions and that includes responsibility of employer (S.44), responsibility for payment of wages and compensation (S.45).

Chapter X and XI of the Act respectively provides about procedures relating to penalties and miscellaneous provisions.


The Act enacted mainly for the purpose of social security protection of unorganized workers. The Act is very relevant for the migrant workers as because the maximum numbers of them engaged in unorganized sectors.

The important provisions of the Act highlighted below:

- The Act will extend to all the workers engaged in unorganized sectors, whether, employee directly or through an agency or contractor, whether a casual or temporary worker, a migrant worker and workers employed by
households including domestic workers – self employed or employed for wages.

- Central Government shall formulate and notify suitable welfare schemes for unorganized on matters relating to life and disability cover, health and maternity benefits, old age protection etc.

- State Government may formulate and notify suitable welfare schemes for unorganized workers relating to Provident Fund, Employment injury benefit, Housing, Educational scheme for children, skill upgradation of workers, funeral assistance and old age homes etc.

- Central and State Governments shall constitute National Social Security Board and State Social Security Board respectively for the administration and coordination of the Act at Central and State levels.

- State Government may setup workers facilitation centers to facilitate the enrolment of the registered unorganized workers in social security schemes, assist unorganized worker to obtain registration etc.

- The Act also laid down the eligibility conditions for registration and social security benefits.

4.21. Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013

The Act mainly aims to protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto. The important provisions of the Act are enumerated below:

Section 2(a) of the Act, define about aggrieved women, and section 2(e) defines "domestic worker" means a woman who is employed to do the household work in any household for remuneration whether in cash or kind, either directly or through any agency on a temporary, permanent, part time- or full time basis, hut does not include any member of the family of the employer. Section 2(f) and sec.2 (g) respectively define as ‘employee’ and ‘employer’. Section 2(o) of the Act defines workplace, which includes:
(i) any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the appropriate Government or the local authority or a Government company or a corporation or a cooperative society;

(ii) any private sector organisation or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organisation, unit or service provider carrying on commercial, professional, vocational, educational, entertainmental, industrial, health services or financial activities including production, supply, sale, distribution or service;

(iii) hospitals or nursing homes;

(iv) any sports institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto;

(v) any place visited by the employee arising out of or during the course of employment including transportation provided by the employer for undertaking such journey;

(vi) a dwelling place or house.

Section 4(1) and Sec.5 of the Act respectively provides about constitution of internal complaints committee and constitution of local complaints committee.

The aforesaid discussion made it clear that there are ample of Constitutional provisions and Legislative enactments are available to protect the rights of the migrant workers. The researcher has taken conceptualized prior to start research on the issue of 'Inter-State migration involves socio-economic factors'. That has been established as prove throughout this chapter. This chapter also has discussed about protection of social and economic rights of the migrant workers under the various provisions of the Constitution. Enough legislation has been created by the legislative machinery but the conditions of the workers are not conducive in their place of employment. The Constitution and Legislation are the guiding principles for the creation of different
schemes and programmes to avail and guarantee regarding improvement of better working conditions.

Various efforts and measures provided by the Constitution and legislation to minimize the violation of the rights of the migrant workers. But the conditions of the workers become vulnerable in day by day. In this regard the Judiciary should play vital role when the legislation and executive is silent on any issue. As a guarantor of justice the judiciary must be successful in carrying out its obligations.