Chapter – III

Inter-State Migrant Construction Workers in India
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Globalization, Modernisation has turned the world into a global world. In such global world mankind has a huge demand for luxurious life and comfort. To live in a comfort and luxurious life, people leave their homes and move to alien surroundings mainly for employment. Migration for employment is an important livelihood strategy for workers in developing countries like India. India was and still is primarily an agriculture based country. Major population of the country is still engaged in agriculture. The profession of agriculture is not very lucrative in the modern world. With the advent of industrialization in India there has been a general negligence of the agriculture sector. Industrialization, urbanization accompanied by transport and communication facilities has brought about a massive shift of labour from their villages to cities and from one state to another in search of employment.

3.1 Significance of Construction Industry

Construction industry has registered enormous growth throughout the world during the last few decades. The growth has been diverse in nature. The industrialized countries invest more on civil works, projects associated with energy, space research, armaments industry, new building materials and machinery and on retrofitting, upgrading and maintenance of existing structures. The developing countries are engaged more in the construction of civic, social and developmental infra-structure projects, roads and projects like dams, housing and other structures required for economic growth and improving the quality of life.¹ Over 100 million workers are

engaged in construction trades around the globe. Construction workers constitute 6 to 7% of the world labour force: in some countries the figure is as high as 20%.²

Construction industry is the second largest economic activity in India, and plays an important role in the Nation’s economy. It is a van guard activity of several other key sector of economy whose performance is dependent on the satisfactory performance of this industry. A change in the level of construction activity affects manufacturing, the general employment, income of people and Gross Domestic Product (GDP). Construction has accounted for about 40% of the investment in the country during the last 45 years. Around 16% of the nations working population depends on it for their livelihood. An estimated 14.6 million person were directly employed in construction in 1995-96.³

In the post liberalization period, Indian construction industry is witnessing many structural changes which are radically transforming the industry as well as the construction labour market. Since the industry has so far been based on labour intensive technologies, it has been a source of ready employment to a large mass of urban and rural poor. In fact, one major factor, which has been discouraging the modernisation of the construction industry, was the abundance of cheap labour. The present trend towards induction of modern technology in construction industry is likely to transform the traditional labour market.⁴ Roads, Dams, Irrigation work, Schools, houses, hospitals, factories and other construction works provide the essential infrastructure for development, and contribute to better living standard.⁵

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³ Id. at 2.159
⁴ Id. at 7.116
⁵ Id. at 2.160
Construction industry is booming fast in India. Construction Industry has several features that distinguish it from most other industries so far as the status and welfare of the workers is concerned. The construction industry is a major source of employment, the second largest after agriculture. Construction industry covers a wide field of activities and provides employment for workers of various levels of skills. Much of the work in this field goes on under condition that are often very strenuous and hazardous.\(^6\) Construction industry is creating new employment attracting several skilled, semi–skilled and unskilled workers to migrate from their native places where they find difficulties in getting employment owing to their limited skills. Thus, construction industry is the largest employer of migrants. The construction industry makes a major positive contribution to the economy of the nation. The rapidly growing construction industry in India has emerged as the main employer of migrant workers. The below Box 3.1 highlights recent growth of India’s construction sector.

**Box 3.1**

**Growth in India’s Construction Sector**

- Between 2004 – 2005 and 2011 – 2012, construction sector GDP grew on average at 9.75 percent annually, making the sector the third fastest growing industry group, after communication and banking and insurance. During this period, employment in construction also grew at 9.8 percent annually, the highest among all industry groups.

- In 2011 – 12, the construction sector employed about 50 million people, making it the largest employer outside of agriculture after trade, hotel work and manufacturing.

**Source:** NSSO, Rounds 64 and 66

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Construction Industry plays a major role in combating the high levels of unemployment and in absorbing surplus labour from rural areas. Most of the workers in the construction industry are employed on a causal basis. Unstable employment, irregular earnings and shifting of work places are the basic characteristics of work for construction workers. The work in the construction Industry is also characterized by its casual nature, temporary relationship between employer and employee and uncertain working hours. The construction industries are highly mobile one, where the workers move from site to site. The majority of the construction sites are of a temporary nature. Construction work is highly labour intensive and also highly mechanized. The entire activity in construction industry is mobile, seasonal, and intermittent and mostly inter-connected. The completion of work in construction industry ranges widely and calls for engagement of labour from various trades, skills and profession. The duration of employment, quantum of work, work pressure and duousness differ from one extreme to another.

One of the major features of construction industry is that it is prone to risks of accidents. Due to non – detection and non – reporting accurate statistics of the number of such accidents is difficult to obtain. The temporary and dangerous nature of the construction work leaves the workers open to exploitation – economic and physical. One of the most striking features of the construction industry is the pre-dominance of fragmentation of economic relationship on a worksite. The another significant feature of construction industry is that the government is the largest principal employer of construction workers as it undertakes the maximum construction work.
According to the first National Commission on Labour⁷, the Government is the largest employer as public constructions – dams, bridges, roads and public buildings, makeup the major share of expenditure in this industry. The Government also sets many of the construction industry norms. Although Government is the largest principal employer in the construction industry, only some of its construction work has been done by public agencies, such as the Central Public Works Department (CPWD) and public sector firms, such as the National Building and Construction Company (NBCC). Most construction activity in the post – independence years has been undertaken by government bodies through private construction companies. The second National Commission on Labour estimates that some 200 construction companies comprises the top rung of the industry, followed by 90,000 middle – level firms who fall into the category of class ‘A’ contractors. At the bottom are some 6 lakh small firms / contractors / sub – contractors.

3.2 Meaning of Construction Work and Building Worker

Construction has been variously defined as a product, considering the nature of the construction process and features, or as a series of related but discrete activities and outputs.⁸ Construction workers are those who work predominantly on construction sites and are typically engaged in the regular aspects of the industry other than design and financing.⁹ “Building or construction work” means the construction, alteration, repairs, maintenance or demolition of, in relation to, buildings, street, roads, railways, tramways, airfields, irrigation, drainage, embankment and navigation

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works, flood control works (including storm water drainage work), generation, transmission and distribution of power, installations, electric lines, wireless, radio, television, telephone, telegraph and overseas communications, dams, canals, reservoirs, watercourses, tunnels, bridges, viaducts, aqueducts, pipelines, towers, cooling towers, transmission towers and such other works but does not include any building or other construction works to which the provisions of the Factories Act 1948 or the Mines Act, 1952 apply.10

“Building worker” means a person who is employed to do any skilled, semi skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be expressed or implied, in connection with any building or other construction work.11

3.3 Classification of Construction Industry

Construction industry has been broadly classified into Building works, involving projects like houses, offices, schools, factories, shops, hospitals, power plants, stations etc. and civil engineering works involving project like roads, tunnels, bridges, dams, canals, docks etc12.

Construction Industry involves personnel of different cadre starting from skilled, semi-skilled, and unskilled labourers to technical and management personnel including the contractors. The contractors are the persons responsible for the day-to-day oversight at the construction site providing all the material, labour services and equipments as necessary for the project. The contractors are classified13 into:

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10 Section 2(d), The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.
11 Ibid., Section, 2(e)
12 Available at http://www.constructionace.com, visited on October 16th, 2011
13 Ibid
Building Contractors build residential, Industrial, Commercial and other buildings.

Heavy / Civil contractors build sewers, roads, dams bridges and tunnels etc.

Special trade contractors are engaged in specialized work like carpentry, painting, plumbing and electrical work etc.

According to the ILO “Building and Civil Engineering may be divided into four main parts; Work above ground, work in open excavation, under ground work and under water work”, involving the following operations. (a) Construction, alteration, repairs, maintenance or demolition of a building, flooring, mosaic flooring, sawing, jally work, concrete work, carpentry, painting, centring, welding, smithy work, electric work, plumbing and fittings, hut making or any such work which goes into the making of aforesaid construction or the preparation for, and the laying of the foundation of an intended building including boundary walls or construction of wells and includes the construction of furnace, chimney, well or and ancillary structure; (b) Construction of any railway line or siding other than upon an existing railway, the construction, structural alteration or repair, maintenance and laying of foundation or demolition of dock, harbour, canal, dams, embankments including river-valley projects, tanks and water course, inland navigation, road, tunnel, bridge, viaduct, water works, reservoir, pipe lines, aqueduct, sewer, sewerage works, river works, air fields, sea defence works, gas works and any steel or reinforced concrete structure other than a building, or any other civil or constructional engineering work of a nature similar to any of the foregoing works or construction operations connected with the installation of machinery in any of the aforesaid construction activities”.14

3.4 Migrant Construction Workers

Unorganised sector contributes a pivotal part of the Indian economy. In 2012, there were around 487 million workers in India, the second largest after China and ninety four percent of India’s working population is part of the unorganized sector. As per the estimates of NSS (2009-10) there are around 4.46 crore buildings and other construction workers in India. Construction is the largest unorganized sector in India with vast labour intensity and economic activity after agriculture. Construction workers are one of the most numerous and vulnerable segments of the unorganized sector workers in India. Construction Industry generates demand for skilled, unskilled and semi-skilled labour force. The construction industry is chock-blocked with casual workers, skilled, semi – skilled and unskilled workers.

Construction Industry comprised of both local and migrant work force. The construction industry has a long tradition of employing migrant labour. Most of the workers in the employment of construction is migrant labour. Employers of construction industry prefer to hire migrant labour, as they are considered to be cheaper and more docile than local labour. Consequently labourers need to migrate in search of employment which there is unavailable in their native region. Thus a large number of migrants find their way into the construction industry. The construction industry, with its huge demand for labour, ultimately provides employment to a majority of the migrant workforce. Construction industry is one of the largest recipients of migrant labour. Migrant construction workers are those workers who migrate from place to place like nomads in search of better opportunities for work. Neither their job nor their work at a particular site is permanent or of pennial nature. The workers within the construction industry are highly mobile, with workers
migrating from place to place in search of work and often not staying on a single place for more than year or two at a time\textsuperscript{15}. Construction workers have maximum mobility, because of their work. Migrant construction workers are exploited because they are illiterate, socially backward, unskilled, unorganised, uniformed, poor\textsuperscript{16}. No accurate figures exist on the number of workers employed in the construction industry since it comprises activities ranging from small houses to mega dams and bridges.

The second National Commission on Labour estimates that the construction sector employees about 16 percent of the country’s workforce. India’s three crore construction workers are literally the builders of modern India. They build the buildings, residential flat, roads and highways, the railway tracks, airports, dams, canals etc. In the present globalizing economy, they are also constructing the new economic zones, the IT cities, the call centers and mega malls that are creating new forms of wealth today. Construction workers are the backbone of the economy as they create the infrastructure necessary for industrial growth. The employment of migrant workers in the construction industry exhibits a very high degree of casualisation and contractualisation. Therefore, the labour migration to the construction industry, its impact on workers and construction industry is an important research issue.

### 3.5 Construction Workers – Legal Provisions

The construction workers constitute one of the largest categories of workers in the unorganized sector. Construction industry is a good example of the evolutionary

\textsuperscript{15} Rana,N and Kumar Rana, “Women’s Labour and Migration”, Economic and Political Weekly December (1997) P.3187

nature of labour legislation. In early period, construction industry was a neglected industry. There were no labour laws to regulate working conditions and welfare of construction workers till mid seventies. The situation prevailed till mid seventies began to change due to the growing size of construction labour and the public policy concern with the lot of workforce in the non formal sector of the economy. The predominance of fragmentation of economic relationship virtually makes impossible to enact and enforce and meaningful labour legislations to the construction industry and its workers. However, there are many labour laws applicable to construction industry and its workers. The important Acts viz Contract Labour Act, Abolition of Bonded Labour Act and Inter – State Migrant Act are discussed in detail in the subsequent chapter of the present study. This part of the present chapter focuses the legal provisions applicable to construction workers in various labour laws and the specific beneficial protective legislations applicable to them.

- **The Employees Compensation Act, 1923** provides compensation to the employees for injury by an accident arising out of and in the course of employment. Workers employed in the construction industry are covered in the list of persons who are included in the definition of employees.

- **Trade Unions Act 1926** provides for freedom of association and registration of Trade Unions. Trade Unions may be temporary or permanent. Formation and Registration of Trade Unions is subject to the conditions laid down in the Provisions of the Act.

- **Payment of Wages Act, 1936** regulates the payment of wages, fix the responsibility for payment of wages, Time for Payment of Wages and

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17 Schedule II (Sl.No. VIII) (Section 2(1) (dd) , Employees Compensation Act, 1923.
prevent unauthorized deductions from wages. As per this Act, Industrial or other establishment means any establishment in which any work relating to the construction, development or maintenance of buildings, roads, bridges or canals or relating to operations connected with navigation, irrigation or the supply of water or relating to the generation, transmission and distribution of electricity or any other form of power is being carried on.\(^{18}\)

- **The Industrial Disputes Act, 1947** provides for the investigation and settlement of Industrial Disputes. The Act is applicable to construction workers. The Inter – State Migrant Construction workers may raise an Industrial dispute either in their Home State or Host State. Construction work is time bound and not perennial in nature hence retrenchment of workmen engaged in building and construction work cannot be avoided.

- **The Minimum Wages Act, 1948** provides for fixing of minimum wages in scheduled employments. Employees employed in construction or maintenance of roads or in building operations which is a scheduled employment in the Minimum Wages Act.\(^{19}\)

- **Employees Provident Funds Act, 1952** provides for the institution of Provident fund, Pension fund and Deposit linked Insurance Fund for employees in factories and other establishments. Coverage of Building and Construction Industry was made by the Act from 31st October, 1980.\(^{20}\)

\(^{18}\) Section 2 (ii) (g), Payment of Wages Act, 1936.
\(^{19}\) Schedule of Minimum Wages Act, 1948, Part – I, item 7, Sections 2(g) and 27 of the Minimum Wages Act,1948.
\(^{20}\) Appendix – List of Non – Factory Industries to which the Employees Provident Funds Act, 1952 has been made applicable under section 1(3)(b)
**Payment of Bonus Act 1965** is an Act to provide payment of Bonus to persons employed in certain establishments on the basis of profits or on the basis of production or productivity. The Act applies to every establishment in which twenty or more persons are employed on any day during an accounting year. Every employee is entitled to bonus to be paid by his employer in an accounting year if he has worked in the establishment for not less than thirty working days in that year. However, the Act is not applicable to employees employed by an establishment engaged in any industry carried on by or under the authority of any department of the central Government or a State Government or a Local authority.

**The Contract Labour (Regulation and Abolition) Act, 1970** provides for conditions under which contract work is permissible, registration of contractors and employers and regulation of working conditions.

**Payment of Gratuity Act, 1972** is also applicable to workers employed in building and other construction site being an establishment.

**The Equal Remuneration Act, 1976** provides for non-discrimination between men and women in matters relating to remuneration. Construction and activities connected with construction are specified in the Schedule of the Act.

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21 Section 1 (3) (b) Payment of Bonus Act, 1965  
22 Section 8 Ibid.  
23 Section 32 Ibid.  
The Inter – State Migrant Workmen Act, 1979 covers only Inter – State Migrant workers employed in any nature of industry. This Act provides for regulation of conditions of recruitment, transportation and work and provision of basic facilities by the principal employers and contractors for Inter – State Migrant Workers.

The Unorganized Workers Social Security Act, 2008 provides Social Security and Welfare to unorganized workers. According to this Act, ‘Unorganised Worker’ means a home-based worker, self employed worker or a wage worker in the unorganized sector and includes a worker in the organized sector who is not covered by any of the Acts mentioned in Schedule II. Employees Compensation Act, 1923, Industrial Disputes Act, 1947, Employees State Insurance Act, 1948, Employees Provident Funds Act, 1952, Maternity Benefit Act, 1961 and Payment of Gratuity Act, 1972 are under the Schedule II of the Act. The Act defines ‘Wage worker’. It means a person employed for remuneration in the unorganized 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, whether in cash or in kind, whether as a home based worker or as a temporary or casual worker or as a migrant worker or workers employed by households including domestic workers. The Act also defines the term ‘unorganised sector’. It means an enterprise owned by individuals or self – employed workers and engaged in the production or sale of

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26 Section 2 (m) Unorganized Workers Social Security Act, 2008
27 Ibid
28 Section 2 (n) Unorganized Workers Social Security Act, 2008.
goods or providing service of any kind whatever and where the enterprise employs workers, the number of such workers is less than ten.\textsuperscript{29}

Construction workers do not get benefit under the Employees State Insurance Act, 1948 but are covered by the Employees Compensation Act, 1923. The Maternity Benefits Act, 1961 applies to the women workers employed in Construction Industry but the number of benefits is limited due to the intermittent nature of employment.

In addition to the above laws, there are two special beneficiary protective legislations to protect the interest of construction workers. It is appropriate in this chapter of the present study to discuss in detail about the law exclusively applicable to construction workers. The two special protective legislations applicable to construction workers are;

(i) The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (BOCW Act) and


Although the provisions of the above Labour Laws are applicable to the Construction Workers yet a need has been felt for a comprehensive central legislation for regulating the construction workers safety, health, welfare and other conditions of service. Majority of the State Governments have favoured for such legislation. A general consensus had emerged on the need for the proposed central legislation in the 41\textsuperscript{st} labour Ministers Conference held on 1995. It has been considered necessary to constitute welfare Boards in every state so as to provide and monitor Social Security

\textsuperscript{29} Section 2(I), Unorganised Workers Social Security Act, 2008.
Schemes and welfare measures for the benefit of building and other construction workers. For this purpose, it has been considered appropriate to bring in a comprehensive legislation by suitably amplifying the provisions of the Building and other Construction Workers (Regulation of Employment and Conditions of Service) Bill, 1988. It has also been considered necessary to levy a cess or the cost of construction incurred by the employers on the building and other construction work for ensuring sufficient funds for the welfare boards to undertake the social security schemes and welfare measures.

In view of the urgency felt by the Government for meeting the longstanding demand for the aforesaid legislation, the President of India was pleased to promulgate the Building and other Construction Workers (Regulation of Employment and Conditions of Service) Ordinance 1995 along with another ordinance for the levy of a cess on the same year. The Bill for the above ordinance was introduced in the year 1995 but the Bill could not be taken up for consideration in the Parliament. Hence, a second ordinance was promulgated on 1996 with a view to provide continued effect to legislative protection. The above Bill 1995 has lapsed due to the dissolution of 10th Lokshaba. Therefore, again the President of India was pleased to promulgate the third ordinance in the year 1996 in order to give continued effect to the legislative protection envisaged in the said ordinance.

Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 and Building and other Construction Workers Welfare Cess Act, 1996 were enacted with a view to regulating the wages, working conditions, safety and health, welfare measures etc, of these workers.
Under these Acts, the states have to frame and notify Rules, Constitute Advisory Committees / Expert Committees, appoint various authorities from registration of workers, cess collection, inspection and Appealing Authority and constitute State Building and other Construction Workers Welfare Boards to frame and implement various welfare schemes.

Central Government is the implementing agency in the central sphere for the purpose of enforcement of various provisions of the Act, while states are implementing authority under state sphere.

3.5.1 Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996

This is an Act 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 Act guarantees adequate protection and reasonable living conditions to the migrant workers employed in construction industries. The Act provides for provision of basic facilities by builders and minimum conditions of work in construction sites.

The Act applies to every establishment which employs 10 or more workers in any building or other construction work. The Act covers all Central and State Government establishments. The building workers employed in different relays in a day either by the employer or the contractor shall be taken into account in computing the number of building workers employed in the establishment. Thus, in this Act contractor is an employer. According to the Act, establishment means any establishment belonging to or under the control of Government, any body corporate or

30 Section 1 (4)
firm, an individual or association or other body of individuals which or who employs building workers in any building or other construction work; and includes an establishment belonging to a contractor\textsuperscript{31}. The Act does not apply to an individual who employs building workers in any building or construction work in relation to his own residence the total cost of such construction not being more than rupees ten lakh\textsuperscript{32}. The special feature of the Act is that it covers all private residential buildings if the cost of construction is more than rupees ten lakhs.

Section 3 the Act empower the Central Government to constitute a committee to be called the central building and other construction workers advisory committee (Central Advisory Committee) to advise the Central Government on matters arising out of the administration of the Act as may be referred to it. The Central Advisory Committee consist of a chair person appointed by the Central Government, three members of Parliament, two are elected from house of the people and one from council of states as members, a director – General as an ex – officio member and other members not exceeding thirteen but not less than nine nominated by the central government representing the employers, building workers, association of architects, engineers, accident insurance institutions. The members nominated to represent the building workers shall not be less than the number of members nominated to represent the employers.

Similarly, under section 4 of the Act, the State Government is empowered to constitute a committee to be called the state building and other construction workers Advisory Committee (State Advisory Committee) to advise the state government on matters arising out of the administration of the Act as may be referred to it. The State

\textsuperscript{31} Section 2 (j)
\textsuperscript{32} Ibid.
Advisory Committee consist of a chairperson appointed by the State Government, two members of the State legislature elected from the state legislature as members, a member nominated by the central government, the chief inspector as an ex-officio member and other members not exceeding eleven but not less than seven nominated by the state government representing the employers, building workers, association of architects, engineers, accident insurance institutions. The members nominated to represent the building workers shall not be less than the number of members nominated to represent the employers.

The appropriate Government is empowered to constitute an expert committee under section 5 of the Act for advising the Government for making rules under the Act. The expert committee consisting of persons specially qualified in building or other construction work.

The Act having provisions for registration of each establishment which are covered by the Act. Registration of the establishment is compulsory and no establishment without registration can employ any building or construction worker. Every employer of an establishment to which the Act applies is required to register his establishment under section 7 of the Act within a period of sixty days from the commencement of work. The registration is required to ensure that there are no malpractices and to discourage non compliance of law by circumventing. The appropriate government is empowered to appoint registering officers under section 6 of the Act for this purpose. The registering officer shall register the establishment and issue a certificate of registration. Any change in the ownership or management of the establishment shall be intimated by the employer to the registering officer within thirty days of such change, after giving an opportunity to the employer of the
establishment the registering officer may revoke the registration under section 8 of the Act on the ground that the registration of the establishment has been obtained by misrepresentation or suppression of any material fact or provisions of the Act are not being compiled with in relation to any work carried on by such establishment or the registration has become useless or ineffective.

The aggrieved person from the order of the registering officer may prefer an appeal within thirty days under section 9. The appellate officer shall be nominated by the appropriate government. The appellate officer, after giving the appellant an opportunity of being heard, confirm, modify or reverse the order of revocation. No employers of an establishment employ building workers in the establishment without registration.33

The Act consists of provisions for registration of building workers as beneficiaries.34 A building worker between the age of eighteen and sixty years and who has been engaged in any building or other construction work for not less than ninety days is eligible for registration as a beneficiary under the Act35. Every building worker registered as a beneficiary under the Act is entitled to the benefits provided by the board from its fund under the Act36. The application for registration under section 12 shall be made to the officer authorized by the board. After receiving the application, the authorized officer of the board shall register the name of the building worker as a beneficiary under the Act if the applicant has complied with the provisions of the Act. The application for registration shall not be rejected without giving the applicant an opportunity of being heard. The aggrieved person by the

33 Section 8
34 Chapter IV
35 Section 12
36 Section 11
decision of the officer authorized by the board may prefer an appeal to the secretary of the board or any other officer specified by the board within thirty days and the decision of the secretary or such officer on such appeal shall be final. The beneficiary of the Act is entitled to get an identity card with his photograph from the board\textsuperscript{37}. The identity card should contain enough space for entering the details of building or other construction work done by him. The employer shall enter in the identity card the details of the building or other construction work done by the beneficiary. The beneficiary who has been issued an identity card under the Act shall produce the same whenever demanded by any officer of the government or the board, any inspector or any other authority for inspection.

A building worker who has been registered as a beneficiary under the Act shall cease to be a beneficiary when he attains the age of sixty years or when he is not engaged in building or other construction works for not less than ninety days in a year\textsuperscript{38}. Further, under this section, any period of absence of the beneficiary from the building or other construction work due to any personnel injury caused to the building worker by accident arising out of and in the course of his employment is excluded in computing the period of ninety days. Section 15 of the Act cast a duty upon the employer to maintain register of beneficiaries and the same is subject to inspection of the secretary of the board or any other officer duly authorized by the board without any prior notice.

Section 16 of the Act speaks about contribution of building workers. According to the section, a building worker who has been registered as a beneficiary under the Act shall contribute to the fund at such rate per mensem as may be specified

\textsuperscript{37} Section 13
\textsuperscript{38} Section 14
by the state government until he attains the age of sixty years. The state government may specify different rates of contribution for different classes of building workers. The board may waive the payment of contribution for a period not exceeding three months at a time when a beneficiary is unable to pay his contribution due to any financial hardship. A beneficiary may authorize his employer to deduct his contribution from his monthly wages and to remit the same, within fifteen days from such deduction to the board. As per section 17 of the Act, beneficiary shall cease to be a beneficiary when he has not paid his contribution for a continuous period of not less than one year.

Every State Government is empowered to constitute building and other construction workers welfare boards to exercise the powers conferred on and perform the functions assigned to it under the Act. The state welfare board is a body corporate, having perpetual succession and a common seal and shall by the said name sue and be sued. The board consist of a chairperson, nominated by the Central Government and other members, not exceeding fifteen appointed to it by the State government. The board shall include an equal number of members representing the state government, the employers and the building workers. Atleast one member of the board shall be a woman. The board shall appoint a secretary and he is a chief executive officer. Section 22 of the Act laid down the function of the boards. According to the section, the board may,

- provide immediate assistance to a beneficiary in the case of accident;
- make payment of pension to the beneficiaries who have completed the age of sixty years,
• Sanction loans and advances to a beneficiary for construction of a house.
• Pay such amount with in connection with premia for group insurance scheme of the beneficiaries.
• Give such financial assistance for the education of children of the beneficiaries.
• Meet medical expenses for treatment of major ailment of a beneficiary or to their dependent.
• Make payment of maternity benefit to the female beneficiaries.
• Make provision and improvement of welfare measures and facilities. Grant loan or subsidy to a local authority or an employer in aid of any scheme approved by the government for the welfare of building worker in any establishment.
• Pay annually grants-in-aid to a local authority or to an employer to provide to the satisfaction of the board welfare measures and facility of the standard specified by the board for the benefit of the building workers and the members of their family.

The Act in its section 28 fixing the number of hours of work for normal working day for a building worker with one or more specified intervals. The section provides a day of rest in every period of seven days to all building workers and for the payment of remuneration for the rest days. Further, the section provides for payment of work on a day of rest at a rate not less than the overtime rate specified in section 29. Section 29 provides wages for overtime work. According to this section, a building worker is entitled to wages at the rate of twice his ordinary rate of wages where he is required to work on any day in excess of the number of hours constituting a normal working day. Here, ‘ordinary rates of wages’ means the basic wages plus
such allowances as the worker is for the time being entitled to but does not include any bonus.

Every employer is required to maintain registers and records under section 30 of the Act. The registers and records must contain particulars of building workers employed by him. The work performed by them, the number of hours of work which shall constitute a normal working day for them a day of rest in every period of seven days which shall be allowed to them, the wages paid to them, the receipts given by them and such other particulars.

The Act prohibits employment of certain persons in certain building or other construction work under section 31. As per this section, no person about whom the employer knows or has reason to believe that he is a deaf or he has a defective vision or he has a tendency to giddiness shall be required or allowed to work in any such operation of building or other construction work which is likely to involve a risk of any accident either to the building worker himself or to any other person.

The Act requires the employer to provide effective arrangement for drinking water\textsuperscript{41}. Latrines and urinals shall be provided by the employer and it is not necessary to provide separate urinals in any place where less than fifty persons are employed or where the latrines are connected to water – borne sewage system\textsuperscript{42}. The employer shall provide temporary living accommodation to all building workers employed by him within the work site or as near to it. Accommodation shall have separate cooking place, bathing, washing and lavatory facilities\textsuperscript{43}. Crèches shall be provided in every place wherein more than fifty female building workers are ordinarily employed for the

\textsuperscript{41} Section 32
\textsuperscript{42} Section 33
\textsuperscript{43} Section 34
use of children under the age of six years of such female workers\textsuperscript{44}. First aid facilities shall be provided by the employer in all the places where building or other construction work is carried on\textsuperscript{45}. The appropriate government may require the employer to provide and maintain canteen in every place wherein not less than two hundred and fifty building workers are ordinarily employed\textsuperscript{46}.

The Act consisting provisions for health and safety measures for the construction workers in conformity with ILO Convention No.167, concerning safety and health in construction revising the provisions of the (Building) Convention, 1937. The Act provide for the constitution of safety committees by the employer in every establishment employing five hundred or more building workers are ordinarily employed with equal representation from building workers and employers in addition to appointment of safety officers\textsuperscript{47}.

The employer is required to give notice of certain accidents to the concern authority where in any establishment an accident occurs which causes death or which causes any bodily injury by reason of which the person injured is prevented from working for a period of forty – eight hours or more immediately following the accident\textsuperscript{48}. The concern authority may make an investigation or inquiry on receipt of notice of accident from the employer and where a notice given is related to an accident causing death of five or more persons, the authority shall make an inquiry into such accident within one month of the receipt of the notice\textsuperscript{49}.

\textsuperscript{44} Section 35
\textsuperscript{45} Section 36
\textsuperscript{46} Section 37
\textsuperscript{47} Section 38
\textsuperscript{48} Section 39
\textsuperscript{49} Ibid
The Act confers power upon the appropriate government to make rules for the safety and health of building workers under section 40. According to the section, the appropriate government may make rules regarding the measures to be taken for the safety and health of measures of building workers in the course of their employment and the equipment and appliances necessary to be provided to them for ensuring their safety, health and protection during such employment. The Central Government is empowered to frame model rules for safety measures in respect of all or any of the matters specified in section 40 of the Act after considering the recommendation of the expert committee constituted under section 5 of the Act\(^{50}\).

Inspecting staff are appointed under section 42 of the Act. The Central Government appoints a gazette officer as the Director – General of Inspection who shall be responsible for laying down the standards of inspection and also exercise the powers of an inspector throughout India in relation to all establishments for which the Central Government is the appropriate Government\(^{51}\). Similarly, the State Government is also entitled to appoint a gazetted officer of that Government as Chief Inspector of Inspection of building and construction who shall be responsible for effectively carrying out the provisions of the Act in the State and also exercise the powers of an inspector under the Act throughout the state in relation to establishment for which the state government is the appropriate Government\(^{52}\). The appropriate Government can also appoint inspectors for the purpose of the Act\(^{53}\). The inspectors appointed under the Act are subject to the control of Director – General or the Chief Inspector and their powers and functions are subject to the general control and

\(^{50}\) Section 41  
\(^{51}\) Section 42 (1)  
\(^{52}\) Section 42 (2)  
\(^{53}\) Section 42 (3)
supervision of the Director – General or the Chief Inspector\textsuperscript{54}. Section 43 of the Act lays down the powers of inspectors.

The Employer is responsible for providing constant and adequate supervision of any building or other construction work in his establishment as to ensure compliance with the provisions of the Act relating to safety and for taking all practical steps necessary to prevent accidents\textsuperscript{55}. The employer is also responsible for payment of wages and compensation to each building worker employed by him\textsuperscript{56}. Where the contractor fails to make payment of compensation in respect of a building worker employed by him, where he is liable to make such payment when due or makes short payment thereof, then, in the case of death or disablement of the building worker, the employer shall be liable to make payment of that compensation in full or the unpaid balance due in accordance with the provisions of the Workmen’s Compensation Act, 1923 (Now, Employees Compensation Act, 1923) and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as debt payable by the contractor\textsuperscript{57}.

The employer is required to send notice to the inspector regarding the commencement of building or other construction work at least thirty days before the commencement of any building or other construction work and the written notice must contain the following particulars\textsuperscript{58}:

- The name and situation of the place where the building or other construction work is proposed to be carried on;

\textsuperscript{54} Section 42 (4)
\textsuperscript{55} Section 44
\textsuperscript{56} Section 45
\textsuperscript{57} Section 45(2)
\textsuperscript{58} Section 46
- The name and address of the person who is undertaking the building or other construction work;
- The address to which communications relating to the building or other construction work may be sent;
- The nature of the work involved and the facilities, including any plant and machinery,
- The arrangements for the storage of explosives, if any, to be used in the building or other construction work;
- The number of workers likely to be employed during the various stages of building or other construction work;
- The name and designation of the person who will be in overall charge of the building or other construction work at the site;
- The approximate duration of the work.

The Act contain provisions for penalties of fine and imprisonment for violation and contravention of the Act, contravention of provisions regarding safety measures,\(^{59}\) failure to give notice of the commencement of the building or other construction work,\(^{60}\) obstructions\(^{61}\) and other offences.\(^{62}\) The aggrieved person by the imposition of any penalty under section 50 may prefer an appeal within a period of three months from the date of communication.\(^{63}\)

The appropriate Government after consultation with the expert committee is empowered to make rules under section 62 for carrying out the provisions of this Act.

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\(^{59}\) Section 47  
\(^{60}\) Section 48  
\(^{61}\) Section 49  
\(^{62}\) Section 50  
\(^{63}\) Section 51
and in exercise of the powers conferred under section 62 and section 40 of the Act, the central Government framed the Building and other Construction Workers (Regulation of Employment and Conditions of Service) Central Rules in the year 1998.

3.5.2 Building and other Construction Workers Welfare Cess Act, 1996

This Act is complementary to the Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996. The Act provides for the levy and collection of a cess on the cost of construction incurred by employers with a view to augmenting the resources of the building and other construction workers Welfare Boards constituted under the Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996

In this Act, Cess is levied and collected for the purposes of the Building and Other Construction Workers (Regulation Employment and Conditions of Service) Act, 1996, at a rate not exceeding two percent but not less than one percent of the cost of construction incurred by an employer. Every employer of an establishment who employ building workers in any building and other construction work is liable to pay cess. However, an individual who employs such building workers in relation to his own residence, the total cost of such construction is not more than rupees ten lakh is not liable to pay cess. The cost of land and any compensation paid or payable to the worker shall not be taken as the cost on construction. As per the central rules 1998 of the Act cess to be paid by the employer within 30 days of completion of construction work of one year and every subsequent year if construction work continues on the estimated cost of construction work.

64 Section 3(1)
The cess levied shall be collected from every employer including deduction at source in relation to a building or other construction work of a Government or of a public sector undertaking or advance collection through a local authority where an approval of such building or other construction work by such local authority is required.  

65 The cess collected under the Act shall be paid by the local authority or the State Government to the board after deducting the cost of collection of such cess not exceeding one percent of the amount collected.  

66 The cess leviable under the Act including payment of cess in advance is subject to final assessment and it shall be collected at a uniform rate or rates on the basis of the quantum of the building or other construction work involved.  

67 Advance cess paid under the Act shall be adjusted in final assessment. If any employer fails to pay an amount of cess payable under section 3 within the time specified in the order of assessment, then such employer is liable to pay interest on the amount to be paid at the rate of two percent for every month or part of a month comprised in the period from the date on which such payment is due till such amount is actually paid.  

68 Every employer is required to furnish returns to the concern officer or authority.  

69 The officer or authority to whom or to which the return has been furnished or of the return has not been furnished to the officer or authority under section 4(2) after making an inquiry, by order, assess the amount of cess payable by the employer and the order of assessment shall specify the date within which the cess shall be paid by the employer.  

65 Section 3 (2)  
66 Section 3(3)  
67 Section 3(4)  
68 Section 8  
69 Section 4  
70 Section 5
Power to exempt any employer under the Act is given in section 6. The central government may exempt any employer or class of employers in a state from the payment of cess payable under the Act where such cess is already levied and payable under any corresponding law in force in that state. Section 7 of the Act confers power on the officer or authority of the State Government specially empowered for the purpose of the Act to enter into any places to exercise the powers and discharge the duties. The Act provide penalty for non – payment of cess within the specified time and in such cases, it shall be deemed to be in arrears and the authority after giving a reasonable opportunity may impose on such employer a penalty not exceeding the amount of cess.\(^71\) Sometimes, penalty shall not be imposed under the section if the authority is satisfied that the default was for any good and sufficient reason. Any amount due under the Act, including any interest or penalty from an employer may be recovered in the same manner as an arrear of land revenue.\(^72\)

Appeals have been provided under section 11 of the Act. Any employer aggrieved by an order of assessment made under section 5 of the Act or by an order imposing penalty made under section 9 may prefer an appeal to appellate authority. The appellate authority disposes the same after giving the appellant an opportunity of being heard. Every order passed in appeal under this section shall be final and shall not be called in question in any court of law. The Central Government is empowered to make rules under section 14 of the Act for carrying out the provisions of the Act and in exercise of the powers conferred under this section the central government framed the “Building and other Construction Worker’s Welfare Cess Rules” in the year 1998.

\(^{71}\) Section 9  
\(^{72}\) Section 10
3.5.3 Building and Other Construction Workers Related Laws (Amendment) Bill, 2013

It is proposed to amend the Building and Other Construction Workers Act 1996 and Building and Other Construction Workers Welfare Cess Act 1996 by the Building and other Construction workers related Laws (Amendment) Bill, 2013. A draft cabinet note for amending the Building and Other Construction Workers Act and Building and Other Construction Workers Welfare Cess Act was circulated to all states and concerned department of the Central Government inviting their comments thereon one of the proposed amendments related to empowering the Central Government to levy and collect cess as mandated under the Act and formulate and implement welfare schemes. However, some states have expressed the view that the proposed amendment will erode the state autonomy and interfere in the sphere of state work and the same is not in conformity with the federal principles of the Constitution of India. Nevertheless, the cabinet approved the proposal to carry out the amendments in the Acts. Accordingly, the Bill viz, the Building and Other Construction Workers Related Laws (Amendment) Bill, 2013 was introduced in Rajya Sabha on 18th March 2013.

The text contained in the Box 3.2 highlights the salient feature of the proposed amendments in the Building and Other Construction Workers Act and Building and Other Construction Workers Welfare Cess Act.
Box 3.2

Salient Features of the Building and Other Construction Workers Related Laws

(Amendment) Bill 2013

- Empower the Central Government to specify by notification, the maximum cost of construction in the definition of ‘establishment’ under clause (j) of sub-section (1) of section 2 of BOCW Act, 1996 instead of rupees ten lakhs for application of the said Act.
- Substitute sub-section (1) of section 12 of the BOCW Act, 1996 to amplify the scope of the Act for registration of workers. This is in order to overcome the difficulty the provision of engagement of 90 days is proposed to be done away with. In order to extend benefits to the workers who are engaged in building and construction work after attaining the age of sixty years, the criteria of age limit of sixty years is proposed to be done away with.
- Amend Sub-Section (3) of Section 24 of the BOCW Act, 1996 to empower the Central Government to notify percentage of total expenditure for meeting administrative expenses incurred by the state building and other construction workers welfare Board.
- Amend Sub-Section (3) of Section 12 of the BOCW Welfare Cess Act, 1996 so as to empower the State Governments to file complaints in the courts to take cognizance of an offence.


It is evident from various studies that construction industry has a long tradition of employing migrant labour. The vast majority of migrant workers fall in the unorganized sector – construction Industry. These unorganized migrant construction workers can truly be described as sweat labour. Inspite of these legislations, as
observed by the second National Commission on Labour that Construction workers like many others in the unorganized sector remain invisible and vulnerable voiceless and un-unionized. The existing labour laws and special protective legislations applicable to construction workers are based on inspection, prosecution, fines, etc. The legal processes in these laws are so time consuming that the aggrieved worker may be out of employment due to the nature of employment / nature of his work or employed elsewhere by the time redressal materializes. The workers cannot leave their worksite, forgoing their daily wages to go elsewhere to pursue complaints against violation of laws. The existing laws do not give adequate protections to these sweat workers against victimization and their implementation has been notably poor.

The matter of slow progress of implementation of these Acts has been raised in various fora. The Supreme Court also expressed serious concerns about the delay in the implementation of the provisions of the Act in the judgment of National Campaign Committee for Central Legislation on Construction Labour v Union of India & others. In this case the court directed the Central Government to issue notices under Section 60 of the Building and Other Construction Workers Act, 1996. Section 60 of the Act empower the Central Government to give directions to any State Government or to a Board as to the carrying into execution in that state of any of the provisions of the Act.

In actual practice, the provisions of the above special protective beneficial legislations applicable to the construction workers are beneficial only to the skilled workers and those who work continuously in the industry. Unskilled workers, who do

74 (2011) 4 SCC 655
not work with a construction establishment continuously, may not get the benefits available under the Act.

3.6 Legal Frame Work in Tamilnadu

The Central Law for the Regulation of Employment and conditions of service for the building and other construction workers was enacted in the year 1996. After that, several states have attempted to regulate the working conditions in the construction industry, a law can’t be enforced until rules are framed, detailing how it will operate on the ground. The Act, rules and schemes of Tamilnadu for the welfare of the construction workers are focused in this part.

3.6.1 Tamilnadu Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Rules, 2006

Tamilnadu took another decade to formulate rules under the Central Law. In exercise of the powers conferred by sections 40 and 62 of the Building and Other Construction Workers Act, 1996, Tamilnadu framed the rules in the year 2006. These rules shall apply to the building or other construction work relating to any establishment in which appropriate government is Tamilnadu. The main features of this rule are as follows:

- Laid down the responsibilities and duties of Employers, Employees and others.
- Procedure for constitution of state advisory committee.
- Procedure and manner for Registration of Establishment and Conditions of Registration.
- Procedure for appeal.
- Prescribing Safety and Health measures.
Deals Hours of Work, Welfare and Payment of Wages to the Building workers.

Laid down powers of Chief inspector of Inspection of Building and Construction.

3.6.2 Tamilnadu Building and Construction Workers (Conditions of Employment and Miscellaneous Provisions) Act, 1984

The Tamilnadu Building and Construction Workers (Conditions of Employment and Miscellaneous Provisions) Act, 1984 shortly known as Tamilnadu Building and Construction Workers (TNBCW) Act, 1984 was enacted to regulate the employment and conditions of service of building and construction workers and to provide for their safety health and welfare. The Act applies to every establishment engaged in the work of building construction or work of engineering construction which is not of a hazardous work wherein fifty or more workers are employed. However, the Government after giving not less than two months notice may apply all or any of the provisions of the Act to any establishment engaged in any work of building construction or work of engineering construction employing less than fifty workers.

The Act empowered the Government to make rules requiring registration of establishments licensing of contractors and renewal of license. No license shall be granted or unless notice of commencement of work has been given under section 7 of the Act. Every principal employer is required to send notice of commencement of work at least thirty days before the commencement any work to the Inspector. The written notice of commencement of work shall contain certain particulars such as the

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Section 1(4)(i)
Section 6
name and situation of the work involved, types of construction facilities, the number of workers likely to be employed, the details of the person or authority in overall charge of the work, the approximate capital outlay involved and duration of work approximately 77.

The Act permits the Principal Employer to execute the work through any contractor by giving notice within a week from the date of making such decision. The contractor entrusted the execution of the proposed work shall give at least fifteen days written notice before the commencement of such work to the Inspector by mentioning the particulars specified under section 7 of the Act. Changes in the particulars furnished shall be intimated within two days to the Inspector. The copy of the notice under section 7 shall be displayed at a conspicuous place at or near the site of the work prior to commencement of any work.

The Government is empowered to constitute a State Advisory Building and Construction Workers Board to advise the Government 78 and the Board may constitute committees 79. The employer of every establishment is required to make effective arrangement to provide and maintain a sufficient supply of wholesome drinking water to all workers 80, first aid facilities 81 crèches wherein fifty or more female workers are ordinarily employed 82, canteen and other facilities wherein one hundred or more workers are ordinarily employed on any day in a year 83.
According to the Act, no adult workers shall be required or allowed to work in any establishment for more than nine hours in a week and no adolescent shall be required to work for more than six hours a day inclusive of half an hour rest\textsuperscript{84}. The Act fixed the hours of work of an adult worker and no period shall exceed five hours and no worker shall work more than five hours before he has had an interval of rest of at least half an hour\textsuperscript{85} section 16 of the Act provides weekly holidays with wages in every period of seven days. The Act provided overtime wages to the adult and adolescent workers under section 17. Every adult worker shall be allowed leave with wages for one day for every twenty days of work performed by him. Similarly every adolescent worker shall be allowed leave with wages for one day for every fifteen days of work performed by him\textsuperscript{86}. Every worker who undergoes family planning operation is entitled to a special casual leave with wages for a period not exceeding six days in the case of female\textsuperscript{87}.

In order to ensure compliance of the provisions of the Act the Government is empowered to appoint Chief Inspector and Inspector under section 20 of the Act. The Act enumerates the powers of the chief Inspector and Inspector\textsuperscript{88}.

Employment of safety officer and safety inspectors are provided in the Act. Employers are required to employ safety officer wherein five hundred or more workers are ordinarily employed and safety Inspectors where two hundred and fifty or more workers are ordinarily employed\textsuperscript{89}. The Government is empowered to make rules on safety matters under section 23 of the Act.

\textsuperscript{84} Section 14 \hspace{1cm} \textsuperscript{85} Section 15 \hspace{1cm} \textsuperscript{86} Section 18 \hspace{1cm} \textsuperscript{87} Section 19 \hspace{1cm} \textsuperscript{88} Section 21 \hspace{1cm} \textsuperscript{89} Section 22
The Act contains special provisions for notice of accidents and dangerous occurrences\textsuperscript{90}, appointment of Inquiry officer\textsuperscript{91}, prohibition of employment of children\textsuperscript{92}, Restriction on employment of women\textsuperscript{93}, maintenance of Registers and Records\textsuperscript{94} and Notice of discharge and dismissal of workers\textsuperscript{95}.

Where, in any work, an accident occurs which causes death or any bodily injury which prevented the injured worker from working for a period of forty-eight hours then the employer should send a notice of accident to the Inspector. The Government, if considered necessary, may appoint a competent person to inquire into the causes of any accident occurring in a work. According to section 26, no child is required or allowed to work in any work of Building Construction or work of engineering construction. No woman worker shall be required or allowed to work in a work of building construction or engineering construction except between the hours of 6 a.m and 7 p.m and no employer shall knowingly employ a woman worker in any such work during the six weeks before her expected date of delivery and six week after the day of delivery or miscarriage.

Every employer is required to maintain Registers and Records containing the particulars of workers employed by him the nature of work performed by them, the rates of wages paid to them.

The employer shall not dispense with the services of a workers employed continuously for a period of not less than six months without giving one month’s notice or wages in lieu of such notice. Notice shall not necessary where the services of

\begin{itemize}
\item [\textsuperscript{90}] Section 24
\item [\textsuperscript{91}] Section 25
\item [\textsuperscript{92}] Section 26
\item [\textsuperscript{93}] Section 27
\item [\textsuperscript{94}] Section 28
\item [\textsuperscript{95}] Section 29
\end{itemize}
such a workers are dispended with on a charge of misconduct supported by satisfactory evidence recorded at an inquiry. Appeal has been provided in the Act. Any worker discharged, dismissed or retrenched may prefer an appeal either on the ground that there was no reasonable cause for dispensing with his services or on the ground that he had not been guilty of misconduct as held by the employer or on the ground that the employer did not retrench him in good faith to such authority appointed by the Government. The appellate authority after giving notice to the employer and the workers dismiss the appeal or direct the reinstatement of the employee with or without wages for the period he was kept out of employment or direct payment of compensation without reinstatement or grants such other relief.

The Act contains penal provisions and procedure for it. Section 30 of the Act provides general penalty for offence, for contravenes any of the provisions of the Act. Section 31 of the Act providing as enhanced penalty after previous conviction. Any person who has been convicted of any offence involving a contravention of the same provision, he shall be punishable on a subsequent conviction. The Act imposes penalty under section 32 for obstructing Inspector. Cognizance of offences is specified under section 33. No Court shall take cognizance of any offence under the Act except on a complaint by or with the previous sanction in writing of, an Inspector. Limitation of prosecution is prescribed under section 35 of the Act. No court shall take cognizance of any offence punishable under the Act unless complaint thereof is made within three months of the date on which the alleged commission of the offence came to the knowledge of an Inspector. Where the offence consists of disobeying a written order made by an Inspector, complaint thereof may be made within six months of the date on which the offence is alleged to have been committed.
The Act giving protection to the Government or any officer or authority of the Government for anything is done in good faith. So, in such cases no suit, prosecution or other legal proceeding shall not lie against them.

According to section 40 of the Act, the following provisions of the Act shall apply to building and construction workers.

- The provisions of the Workmen’s Compensation Act, 1923 (Now Employees Compensation Act, 1923) shall apply to building and constructions workers of this Act in relation workmen (now Employee) within the meaning of that Act.
- The provisions of the Payment of Wages Act, 1936 shall apply to building and construction workers of this Act in relation to employed persons within the meaning of that Act.
- The provisions of the Industrial Disputes Act, 1947 shall apply to building and construction workers of this Act in relation to ‘workmen’ within the meaning of that Act and for the purposes of any proceedings under that Act in relation to an Industrial Dispute, a building and construction worker who has been dismissed, discharged or retrenched in connection with or as a consequence of that dispute or whose dismissal, discharge or retrenchment had led to the dispute.
- The provisions of the Maternity Benefit Act, 1961 shall apply to building and construction workers being women whether employed directly or through any agency for wages in any establishment within the meaning of that Act.
- The provisions of the Contract Labour (Regulation and Abolition) Act, 1970 shall apply to building and construction workers in relation to workmen within the meaning of that Act.
- The provisions of the Equal Remuneration Act, 1976 shall apply to building and construction workers as they apply to worker within the meaning of that Act.

- The provisions of the Inter-State migrant workmen (Regulation of Employment and conditions of service) Act, 1979 shall apply to building and construction workers as they apply to or in relation to ‘workmen’ within the meaning of that Act.


The Government is empowered to direct every employer to take out an insurance policy in respect of all or any such classes of the workers employed by him in his establishment for such amount and for such period so as to cover the risks of accident, death or bodily injury or disablement or any other calamity which may arise in the course of the employment of such workers in such establishment\textsuperscript{96}.


\textsuperscript{96} Section 41
1999 and framed Tamilnadu Social Security Welfare Scheme 2001 to provide various welfare assistance to the unorganized workers.

3.6.3 Tamil Nadu Construction Workers Welfare Board

Under the Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996. Act, each state is required to set up a construction workers welfare board, which collects a certain percentage of the total building cost as “cess” from the builder that is to be used towards the welfare of construction workers who are registered with it. Benefits include funds towards marriage expenses of children of construction workers, yearly education expenses based on the academic level of the child.

In Tamilnadu, the construction workers welfare board was setup in 1994 well ahead of other states in the country. The board began collecting 0.3% cess from builders, and increased it to 1% in 2013. The Board alone with 24 lakh registered members has an estimated corpus of Rs.700 crores. Despite such high registration, not a single causality from the site at Moulivakkam was registered with the Board. The Board is also unable to spread the benefits to migrant workers. For instance in the Moulivakkam incident, the majority of the casualities were from out of state.97

It is a moral duty of the state to do so since 1% cess is collected from all big construction sites for the welfare of the workers and in most of these sites migrant workers are employed. It is right time to make compulsory registration of construction workers including migrant workers in the welfare board.

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117
The above discussion shows that the construction industry even in its globalised avatar relies on archaic systems of operation, such as the use of contractors for the supply of labour was a prevalent feature of the colonial mode of labour recruitment and production. The Royal Commission on Labour in 1929 actually recommended the abolition of the institution of the contractor. In 1970, India passed the Contract Labour (Regulation and Abolition) Act. However, this institution not only continues, but has actually deepened with the boom in the construction industry as contractors and sub-contractors are employed even in small projects. This multiple chain of operations creates its own problems of regulation. While there is little doubt that globalization has contributed to increased business opportunities for the construction industry, things have not improved for the workers, who constitute the life and soul of the industry. Getting construction companies to follow the law of the land regarding fulfillment of basic rights related to employment, safety and welfare of workers still seems a distant dream.

Since many labour laws and regulations applicable to the workers of the construction industry for regulating their employment and conditions of service but the status of the sweat construction workers, the real builders of modern India continues to be unsatisfactory. Hence much more needs to be done through different aspect, specific measures for the benefit of these workers.